



centimeters 10 9 8 7 6 5 4 3 2 1 0

inches 4 3 2 1 0

Don Williams

Colors by Munsell Color Services Lab

Golden Thread

D50 Illuminant, 2 degree observer

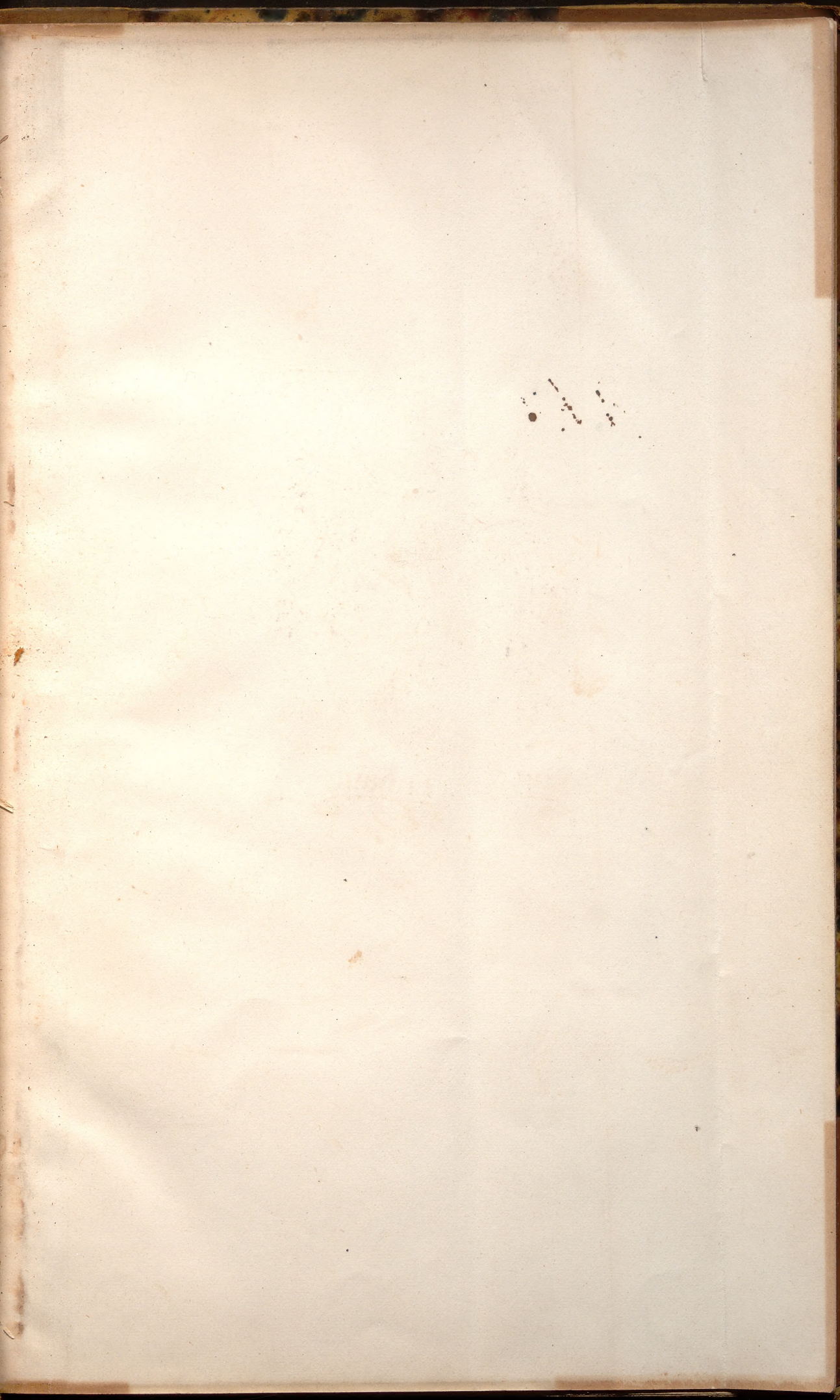
	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15	
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15	
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07	
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19	
Density											0.04	0.09	0.15	0.22	0.36	0.51

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	20.45
b*	0.01	-0.04	0.60	0.73	0.19	0.49	19.43	55.93	68.80	49.49	81.29	50.01	-12.72	-29.46	-16.82
Density	0.75	0.98	1.24	1.67	2.04	2.42									

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centimeters 10 9 8 7 6 5 4 3 2 1 0

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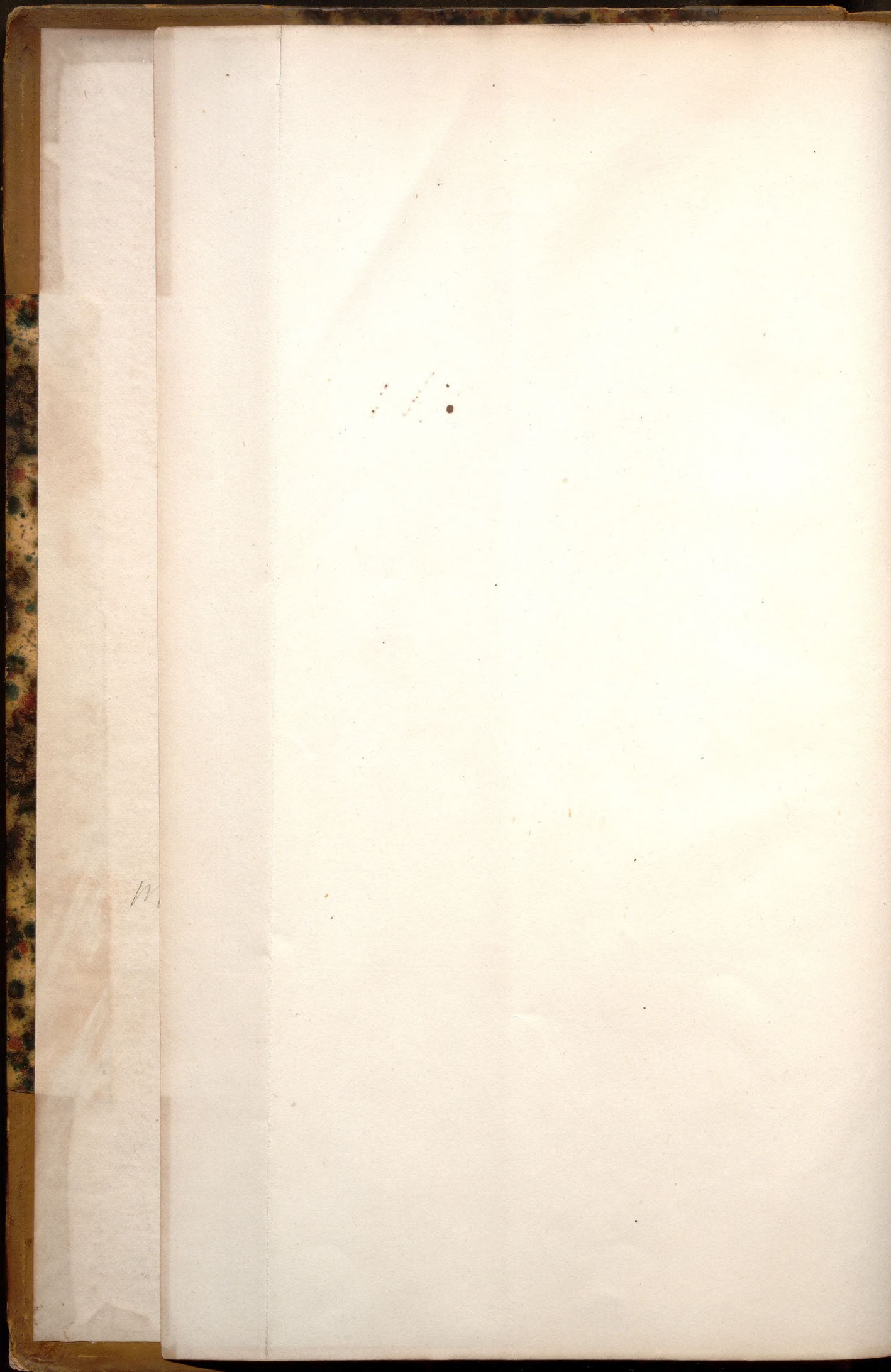
Colors by Munsell Color Services Lab

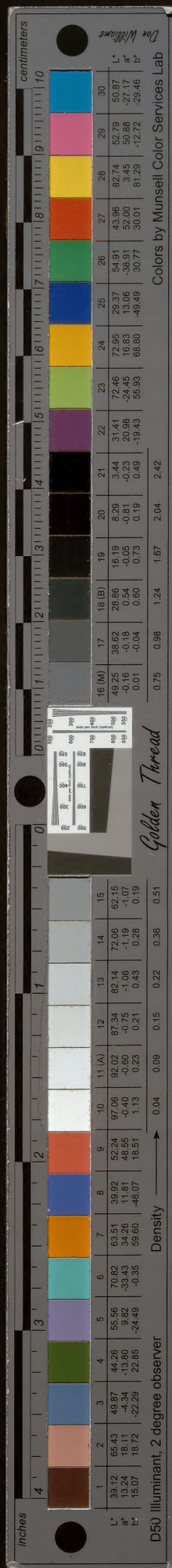
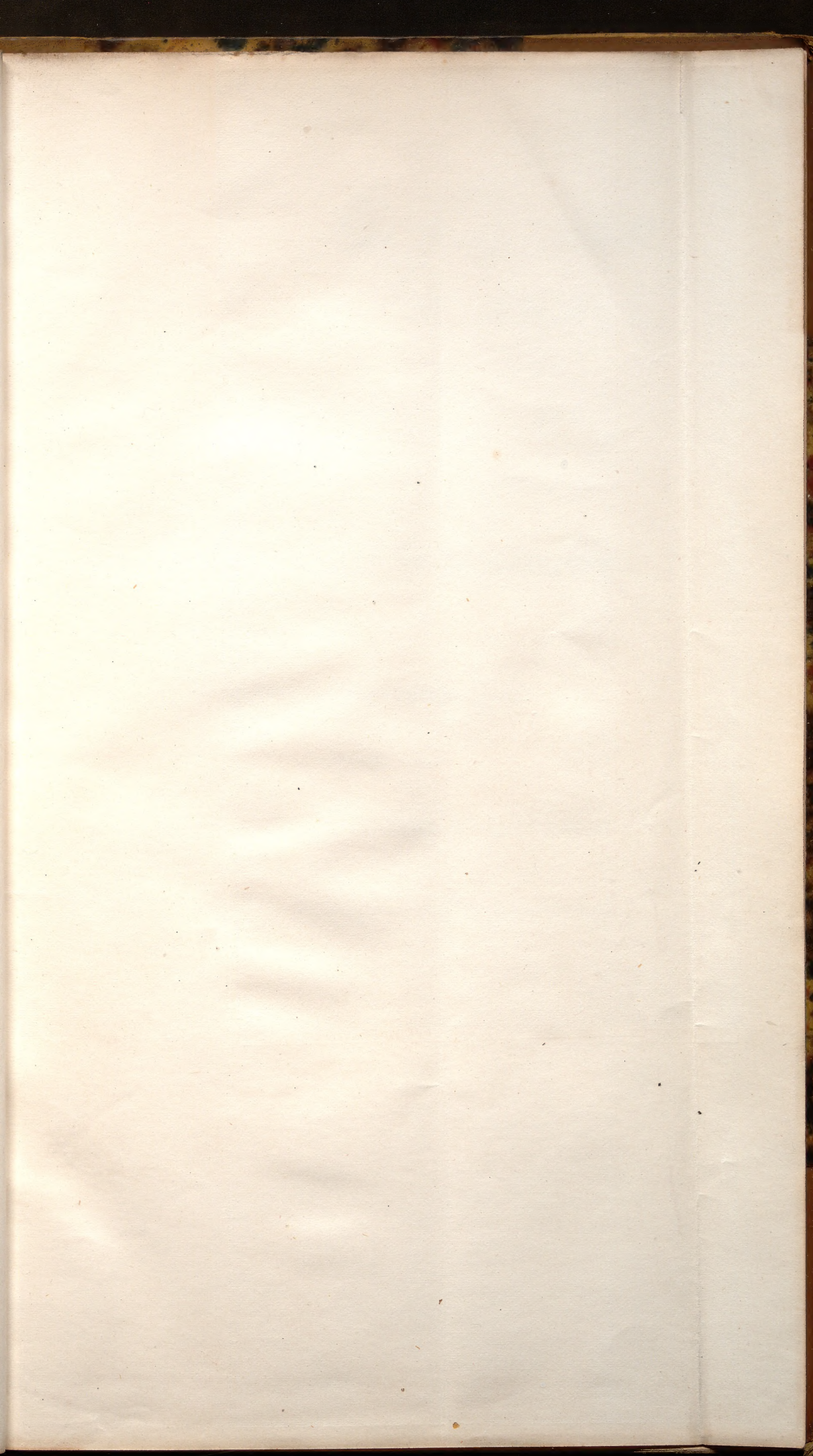
D50 Illuminant, 2 degree observer

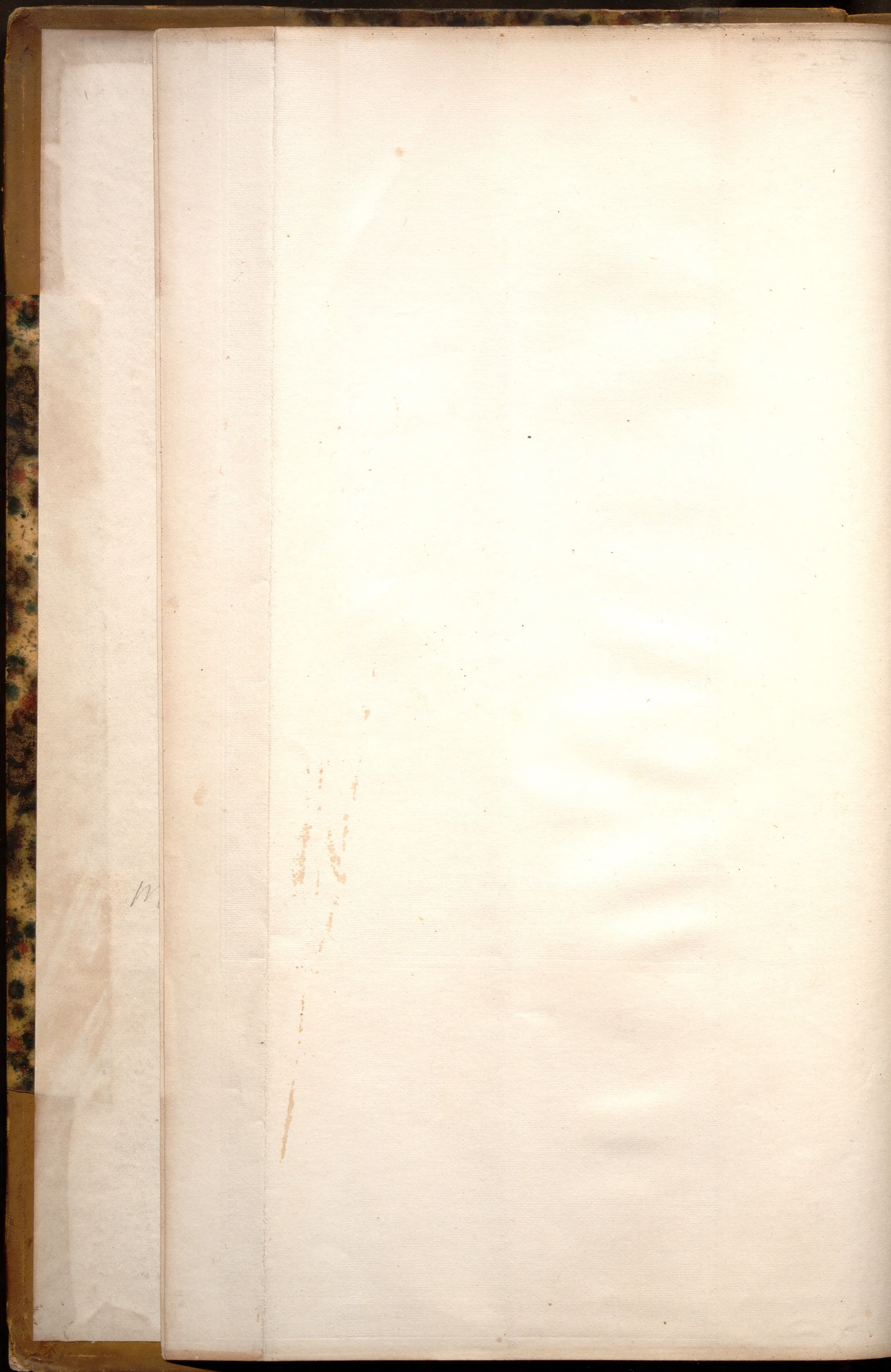
Density

	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	59.60	-46.07	18.51	18.51	1.13	0.23	0.21	0.43	0.28	0.19

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46







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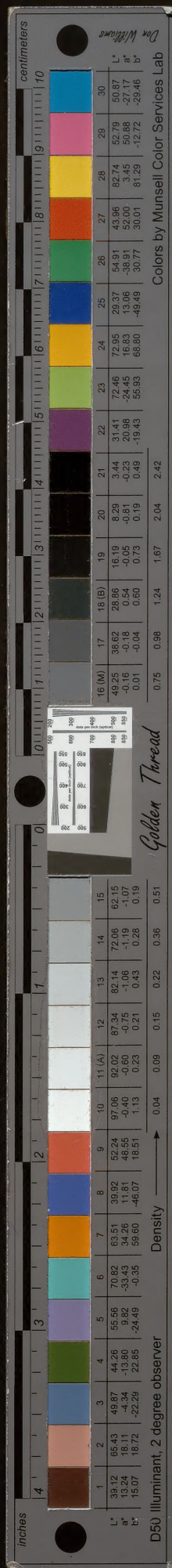
Mr Jay Smith
To be returned

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

ANDREW J. BEAUMONT, et al.

BRIEF OF ARGUMENT FOR PLAINTIFFS.



Ms. A. 9. 2. 11
1841

THE LIBRARY COMPANY OF PHILADELPHIA

ANDREW J. REYNOLDS, CLERK

BRIEF OF ARGUMENT FOR PLAINTIFFS

14

IN THE SUPREME COURT OF PENNSYLV'A

THE LIBRARY COMPANY OF PHILADELPHIA,
in Trust for THE LOGANIAN LIBRARY,
vs.
ANDREW J. BEAUMONT, & AL.

BRIEF OF ARGUMENT FOR THE PLAINTIFFS.

The question presented for decision is: What is the subject matter of the appraisement to be made by the four persons to be indifferently chosen by the parties?

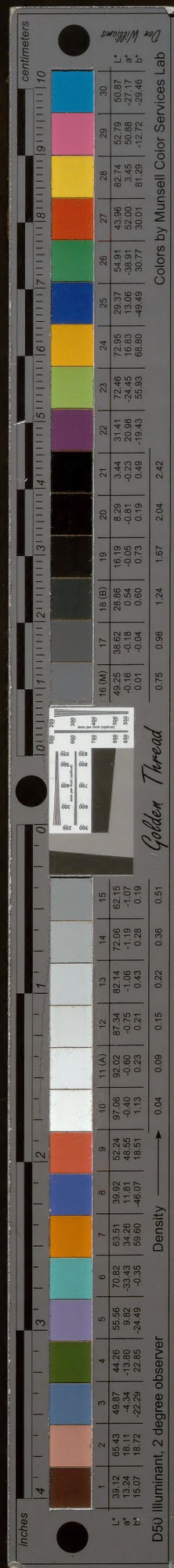
Is it the fee simple value of the land and improvements, clear of incumbrances, as the plaintiffs contend?

Or is it, as the defendants maintain, the present annual value of the land; that is, what would now be just and fair rent for it?

It is submitted on the part of the plaintiffs, that the function of the appraiser is simply to estimate the present market value of the premises clear of incumbrances; and that as soon as this is done, one-half of the excess of the interest, at six per cent., upon the value so ascertained, above the present rent, is, by force and virtue of the covenants of the deed of May 1, 1747, added to the present rent and becomes a new rent for the period of 121 years.

They are far from admitting as the argument of the defendants, p. 15, supposes, that it is the half of the excess of the *annual* value over the present rent that is to be added to it.

Taking into view the nature of the conveyance, and the uniform practice in the reservation of ground rents, with



reference to the price or value of the fee, we respectfully submit that the construction insisted on by the plaintiffs is sounder than that urged by the defendants.

In the first place, it is observable that if it had been the intention of the parties to the deed that the appraiser should ascertain what would be a fair and just rent for the premises, it would have been very easy to have said so. Such stipulations are not unusual in cases of terms with covenants of renewal. But here it cannot fail to be observed, the appraisement is expressly to be of the land and improvements; of the corpus itself. The words are, "the said tract of land and plantation, with all the improvements thereon, are to be valued," &c., "and by how much the true value of the said land and improvements," &c. Nothing can be clearer than this language. There is no room for doubt. To value a tract of land is to estimate how much it is worth; how much it would bring in the market, if sold; in other words, what is its fee simple value? The "true value" is undoubtedly the value as ascertained by the appraisers at the successive periods designated for the appraisement, as contradistinguished from the old value at the creation of the estate or at the antecedent appraisement, and this value is expressly of the land and improvements, which, in the common understanding and natural meaning of the words, is of the fee simple. Who ever speaks of *valuing* a rent, if the object is to ascertain the amount of rent to be paid? If that were the object, other expressions would be used, such as *determining* the rent, or *fixing* the rent, or the like.

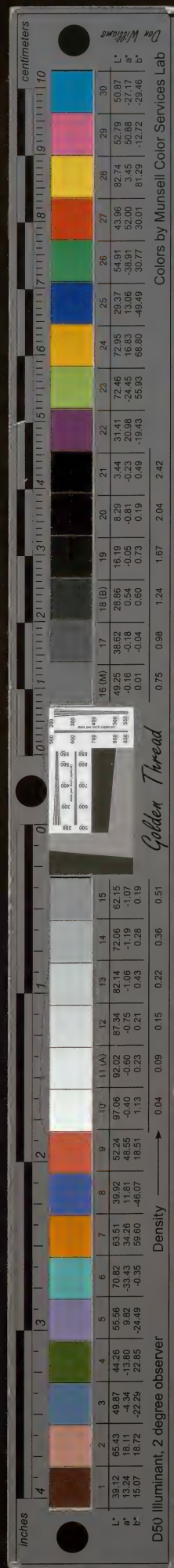
While, therefore, it cannot admit of any reasonable doubt that, under the words "the said tract of land and plantation, with all the improvements thereon, are to be valued," &c., standing by themselves, a valuation of the fee simple is intended; it is contended on the other side, that they are qualified and reduced to an estimation of the annual value by the force of the following clause: "by how much the true value of the said land and improvements shall, in

the estimation of the said four persons, exceed the rent herein reserved; one full half or moiety of such excess shall be added to the said rent herein reserved." The words "true value of the said land" cannot, it is said, mean the value of the fee simple: because that would lead to the absurdity of requiring the payment of a rent equal to half the value of the fee.

In reply to this argument we submit it as clear from doubt, that the "true value" refers to the valuation spoken of in the preceding clause; and that this valuation, in words as plain as language can make it, is of the land and improvements, that is of the fee simple market value thereof; and the words "shall, in the estimation of the said four persons," mean nothing more than "as estimated by the said four persons." So that the clause may fairly be read thus: "by how much the true value, &c., as estimated by the said four persons shall exceed the rent herein reserved."

And then in regard to the absurdity supposed to be involved in this constrution of the words "true value," viz: the requiring a moiety of the fee simple value to be paid as rent, the maxim cited against us *Qui haeret in littera haeret in cortice*, may fairly be retorted. We must endeavor to ascertain the true meaning of the parties by looking at the nature of the instrument, and referring to the universal practice in the reservation of rents on conveyances in fee; and then we think the Court will arrive at the conclusion that what is to be added to the present rent is the moiety of the excess of legal interest on the "true value," that is, the fee simple value of the land and improvements.

What then is the nature of the rent reserved by the deed of May 1st, 1747? Undoubtedly it is a ground rent; a rent reserved on a conveyance in fee. That is not questioned. *Farley vs. Craig*, 6 Halsted, 263, cited on the other side, is an authority, if any was wanted, as to the extent of the estate conveyed. It is highly proper then to bring to view and to apply, in the construction of this instrument,



for the purpose of ascertaining the true intent and meaning of the parties, the relation between a ground rent and the fee simple value of the land.

This relation is familiar to everybody in Pennsylvania, where the practice of selling upon ground rent has existed from a very early period. The rent reserved is the legal interest upon the price of the land, where no part of the purchase money is paid in cash; and upon the balance of the price where part is paid in cash.

This relation between ground rent and the *fee simple value* of the land has existed from the earliest period in this State. It may be safely asserted that ground rents in Pennsylvania, have always been reserved with reference to the price or the actual "true value" of the land, and by taking the legal interest upon that value as the measure of the rent. This is conclusively shown by the usual clause of extinguishment, the capital of the rent at six per cent. being the sum required for its redemption. It is believed that no instance can be produced in which any other rule has been adopted. We know of no instance to the contrary.

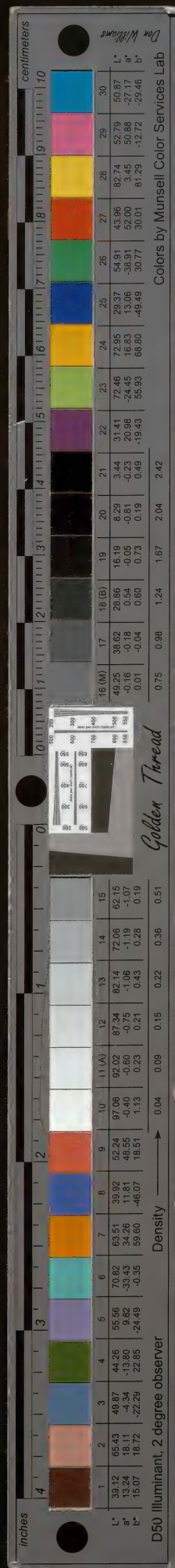
This being so, let us apply this well settled relation between ground rent and the fee simple value of the land in the construction of the deed of May 1st, 1747. The peculiarity of this instruments, which differ it from ordinary ground rent deeds, is that the ground rent is to increased at successive periods by a valuation of the land and all the improvements, and to become a new rent for successive periods of 121 years, the tenant getting the benefit of all the increase in the value of the lands and improvements during these periods of more than a century. As at the creation of the original ground rent, its amount was, doubtless, fixed upon the relation of interest on the fee simple value; so at each successive period the new ground rent is to be ascertained by reference to the same relation of ground rent to interest on the fee simple value at those periods.

That such was the meaning of the parties to the deed of

May 1st, 1747, we have a right to infer from their using language consistent with that meaning, and not consistent with any other meaning. If the excess to be added to the old rent, in order to constitute the new rent in fee, was to be ascertained in accordance with the ordinary practice in Pennsylvania on the creation of ground rents, then it was *absolutely necessary* to ascertain the "true value" of the fee simple, at each successive period, in order to determine the amount of the new ground rent; and, accordingly, we find expressions pointing to a valuation of the fee simple expressions, perfectly proper and in place, in the creation of a ground rent; but altogether improper and out of place if the intention had been thereby to ascertain the annual value or a just rent at those successive periods.

If such had been their intention, why, we repeat, did they not use the words "annual value," "just rent," or other words of like import? How, we add, can the annual value be determined by any appraisement of the "true value" of the fee simple? This true value affords no criterion to settle the annual value. The parties use the word "rent" frequently throughout the instrument. But when they come to designate the mode in which the new rent is to be ascertained, the language is changed and the words "true value" are substituted. Does not this show conclusively that they had clearly in their minds the distinction between *capital* or *fee simple value*, the interest on which constitutes a ground rent, and *rent* or *annual value*, and that they intended something different from annual value to be ascertained?

See how severely this construction requiring the annual value to be ascertained might operate against the interest of Mr. Logan's assigns. The lands might be intentionally left impoverished at the close of each of the designated periods, without manure or proper cultivation, or fences, the houses out of repair, the lime-stone quarries abandoned, or so worked as to require a large outlay of capital



which no annual renter could advance. The annual value might be almost totally destroyed by such conduct of the tenant; while the "true value" of the land or capital would comparatively be only slightly diminished.

It is submitted, then, that the duty, and the only duty, of the appraisers is, to value the land and improvements at their fair market fee simple value. This value is called in the deed the "true value." Having performed this duty they are *functi officio*. It is nowhere said in the deed that the appraisers shall determine what the new rent is to be. The amount of the new rent is fixed and settled by *the covenant of the parties*. The true value of the land and improvements having been determined by the estimation of the appraisers, the new rent follows by force of the covenant, that "by how much the true value of the said land and improvements shall, in the estimation of the said four persons, exceed the rent hereby reserved, one full half or moiety of such excess shall be added to the said rent hereby reserved, and from that time become a new rent." The amount of the new ground rent will follow in conformity to the invariable practice on the reservation of ground rents, by taking legal interest on the true value as thus ascertained, and then adding the moiety of the excess of such interest over the old rent to the old rent.

It is said on the other side, as an argument against taking legal interest on the "true value," that farm lands do not produce six per cent. on their fee simple value.

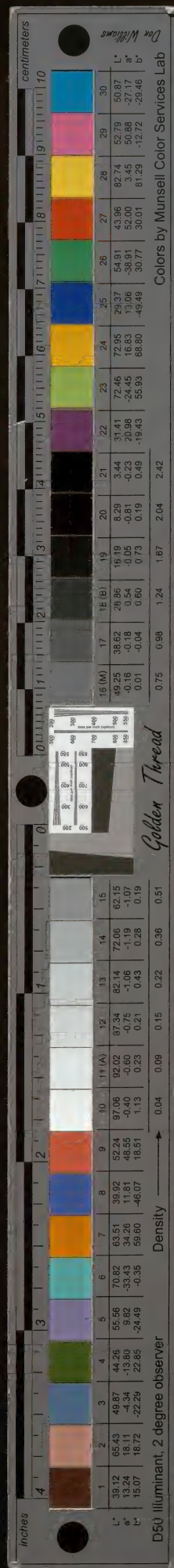
This argument, if it has any pertinency in the case of a reservation of a ground rent on conveyance in fee, is met by the fact that the tenants are not to pay six per cent. but only three per cent. They get their lands for one-half the appraised value. Surely not a very hard bargain for some of the very best land in Bucks County. This rent, it will be observed, is the whole consideration for the land; no other appears in the deed. And in opposition to the argument that the new rent is to be fixed with reference to the

annual value at the period of appraisement, it may further be observed that it would be unjust to all parties to make the price of land depend on the accidental price of wheat in any one year; and yet the price of grain does in a measure regulate the annual rent of a farm. But it is constantly fluctuating. The price of flour has varied in Pennsylvania, during the last thirty years, from \$4.50 to \$12.50 per barrel. It can hardly have been the intention to make the price of the land depend on the failure of the crops of one or two years.

An argument is drawn by our learned opponent against the method of valuation contended for by the plaintiffs, from the fact that one-half of the ores, if any, which might be found in the land do not belong to the plaintiffs—and only one-half of the ores belong to the defendants. How, then, it is asked, can the rent be settled upon a basis having reference to the fee simple value, when only half the ores belongs to the defendants, and the other half still belongs to the Logan family, and has not been transferred to the plaintiffs.

It is not perceived how this suggestion in regard to ores which, we believe, have never yet been discovered, and it is not very probable will ever be discovered, can affect the question of what is to be the subject matter of valuation, whether it be land or rent. It is very clear that one-half of the ores, if any there be, belongs to the assigns of Jonathan Ingham; and only one-half, therefore, would be included in the estimate of the "true value." By calculating the rent, therefore, on the estimate of the true value, including the moiety of the ores belonging to the defendants, the plaintiffs would get nothing more than they are entitled to.

Finally, it is submitted that if the Court shall be of opinion that the appraisers are to estimate the annual value, then clearly it ought to be the gross, and not the nett, annual value, as contended for by the defendants; because



all charges, outgoings and expenses must be considered as covered by the moiety of the excess over the present rent, which the tenants get the benefit of, it not being added to the present rent.

McCALL,
For Plaintiffs.

8.3

IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT.

JANUARY TERM, 1861. No. 32. IN EQUITY.

THE LIBRARY COMPANY OF PHILADELPHIA

v.

ANDREW J. BEAUMONT et al.

Certificate
from
Nisi Prius.

1. Plaintiff's Bill.
2. Answer of Defendants.
3. Decree of Nisi Prius.
4. Assignment of Errors.
5. History of the Case.
6. Argument for Defendants.
7. Appendix, containing Deeds, etc.

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IN THE SUPREME COURT OF PENNSYLVANIA, IN EQUITY.

CERTIFICATE FROM NISI PRIUS.

THE LIBRARY COMPANY OF PHILADELPHIA, in Trust for THE LOGANIAN LIBRARY,

v.

ANDREW J. BEAUMONT, and JOHN A. BEAUMONT, and ELIAS ELY, and OLIVER PARRY, Trustees for RUTH ANN ELY, MARGARET W. ELY, RICHARD ELIAS ELY, and RUTH ELY, and also Trustees for the children of ELIAS ELY, the children of BENJAMIN PARRY and JANE PARRY, his wife, and the children of THOMAS and HANNAH PAXSON.

Jan. Term, 1861.

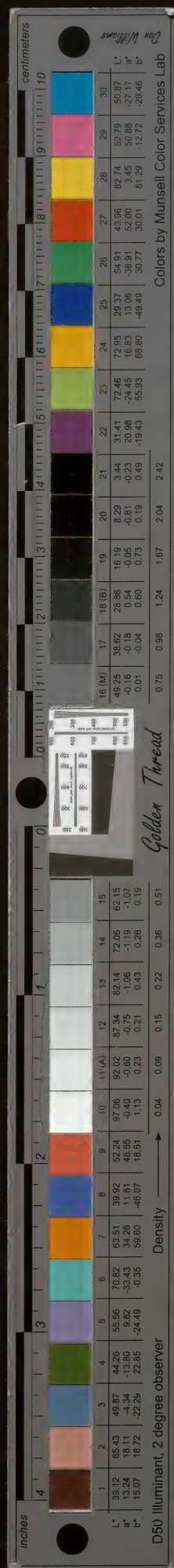
No. 32.

PLAINTIFFS' BILL.

IN THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable the Judges of the Supreme Court of the Commonwealth of Pennsylvania:

The Library Company of Philadelphia, in trust for the Loganian Library, bring this their bill against Andrew J. Beau-



mont, John A. Beaumont, and Elias Ely, and Oliver Parry, trustees for Ruth Anna Ely, Margaret W. Ely, Richard Elias Ely, and Ruth Ely, and also trustees for the children of Elias Ely, the children of Benjamin Parry and Jane Parry, his wife, and the children of Thomas and Hannah Paxson.

And thereupon the plaintiffs complain and say, that by indenture made the first day of May, A.D. 1747, between James Logan, of the one part, and Jonathan Ingham, of the other part, the said James Logan did grant and convey to the said Jonathan Ingham, a certain tract of land in the township of Solesbury, and county of Bucks, in the then Province of Pennsylvania, containing three hundred and ninety-six acres and one hundred and twenty perches; to have and to hold the same from and after the first day of March, in the year 1753-4, to the said Jonathan Ingham, his heirs and assigns, forever; yielding and paying therefor, yearly, to the said James Logan, his heirs and assigns, the yearly rent of twenty-one pounds sterling, on the first day of March in every year, for and during the full term of seven years; and from and after the expiration of the said seven years, for and during the full term of one hundred years then next ensuing, the yearly rent of twenty-five pounds sterling, on the first day of March, yearly, and after the expiration of the said last mentioned term, that is to say, the term of one hundred and seven years from the time of the first entry upon the said land, which will be in the year of our Lord one thousand eight hundred and sixty, sixty-one, it was provided the said tract of land and plantation, with all the improvements thereon, should be valued by four judicious, impartial men, to be indifferently chosen by the heirs and assigns of the said James Logan, of the one part, and the executors, administrators, and assigns of the said Jonathan Ingham, of the other part; and by how much the true value of the said land and improvements should, in the estimation of the said four persons, exceed the rent therein reserved, one full half or moiety of such excess should be added to the said rent therein reserved, and from that time become a new rent, and should be yearly yielded and duly paid to the heirs or assigns of the said James

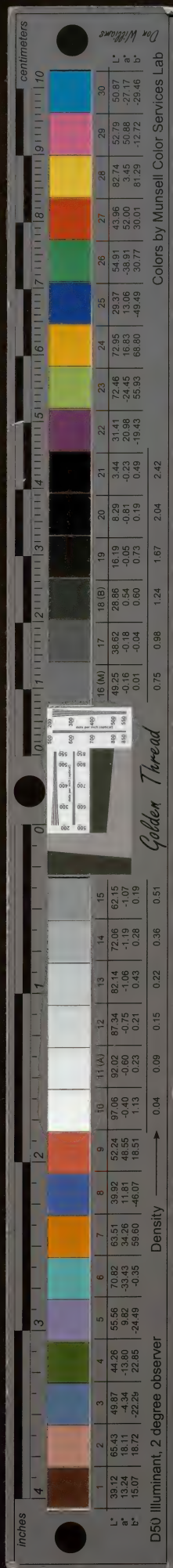
Logan, by the executors, administrators, and assigns of the said Jonathan Ingham, on the first day of March, yearly, forever; and in the like manner the like proceedings should be renewed at the expiration of every term of one hundred and twenty-one years forever thereafter. A copy of the said indenture is hereto annexed as an exhibit, marked (A).

By virtue of divers descents, assurances, and conveyances, the said tract of land with the improvements thereon, charged with the rent reserved as above mentioned, has become vested in the defendants, and the said rent has become vested in the Library Company of Philadelphia, in trust for the Loganian Library.

The plaintiffs aver, that according to the true intent and meaning of the said indenture, the valuation which is to be made at the expiration of the said term of one hundred and seven years, and in like manner at the expiration of every term of one hundred and twenty-one years thereafter, by the four persons to be indifferently chosen by the assigns of the said James Logan and Jonathan Ingham, is of the fair market value of the fee simple of the said tract of land with the improvements thereon, free from all incumbrances; and that one half of the excess of the interest at six per cent. upon that valuation of the fee simple, over and above the said rent of twenty-five pounds, is to be added to that rent, and to become a new rent for the period of one hundred and twenty-one years, from the first day of March, A.D. 1861.

The plaintiffs aver, that they are ready and willing to appoint, and have offered to the defendants to appoint two judicious impartial men on their part, to make such valuation of the fee simple of the said tract of land and improvements, or to join with the defendants in the appointment of four judicious impartial persons indifferently to make such valuation, and have requested and applied to the defendants to do the same, and they well hoped that the defendants would have complied with this their reasonable request.

But so it is, may it please your honors, that the defendants alleging that the valuation to be made, according to the true intent and meaning of the said indenture, is not of the fee simple,



but is only of the net annual value of the said tract of land and improvements, and that a moiety of the excess of such net annual value, over and above the said rent of twenty-five pounds sterling, is to be added to it, altogether decline and refuse to appoint two men to make such valuation of the fee simple as aforesaid, or to join with the plaintiffs in appointing four judicious and impartial persons indifferently to make such valuation, and decline to make any appointment, unless the persons to be appointed are to appraise only the net annual value of the said tract of land and improvements.

To the end, therefore, that the defendants may answer all and singular the premises; and that they may be decreed to appoint two judicious and impartial men to value the fee simple of the said tract of land and improvements, or to join with the plaintiffs in appointing four judicious and impartial persons indifferently to make such valuation; and that the plaintiffs may be decreed to be entitled to have added to the present rent of twenty-five pounds sterling, a moiety of the excess of the interest at six per cent., upon such valuation of the fee simple, over and above the said rent; and that the plaintiffs may have such other and further relief as the circumstances of the case may entitle them to,

May it please your honors to grant to the plaintiffs the commonwealth's writ of subpoena, to be directed to the defendants, commanding them, at a certain time and under a certain pain therein limited, to be and appear before your honors, to answer the premises, and to stand to, perform, and abide such order and decree as your honors shall make in this cause.

And they will ever pray, &c.

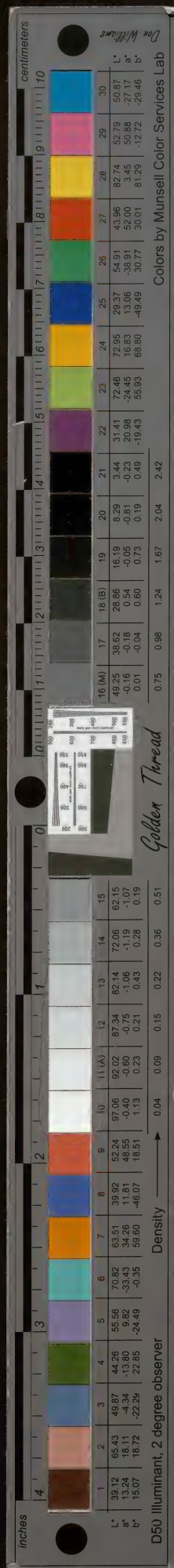
McCALL,
Solicitor for Plaintiffs.

DEFENDANTS' ANSWER.

The joint and several answer of Andrew J. Beaumont, John A. Beaumont, and Elias Ely and Oliver Parry, trustees as aforesaid, to the bill of complaint of the said The Library Company of Philadelphia, in trust for the Loganian Library.

These defendants, saving and reserving the benefit of all and all manner of exceptions to the many imperfections, deficiencies, &c., of the said complainants' bill of complaint, for answer thereto, or so much thereof as they are advised is material to be answered unto, answering say:

That true it is, that by a certain indenture, made the 1st day of May, 1747, between James Logan, of the one part, and Jonathan Ingham, of the other part, the said James Logan did grant, bargain, sell, alien, enfeoff, and confirm unto the said Jonathan Ingham, a certain tract of land, in the township of Solesbury and county of Bucks, in the then Province of Pennsylvania, particularly described in the said indenture, containing three hundred and ninety-six acres and one hundred and twenty perches, to have and to hold the same from and after the 1st day of March, 1753-4, unto the said Jonathan Ingham, his heirs and assigns, forever, yielding and paying therefor yearly to the said James Logan, his heirs and assigns, the yearly rent or sum of twenty-one pounds sterling, on the first day of March in every year, for and during the full term of seven years, and from and after the expiration of the said seven years, for and during the full term of one hundred years then next ensuing, the yearly rent of twenty-five pounds sterling on the first day of March yearly; and it was further agreed and provided in and by the said indenture as follows, viz.: "After the expiration of the said last-mentioned term, that is to say, the term of one hundred and seven years from the time of the first entry upon the said land, which will be in the year of our Lord 1860-1, the said tract of land and plantation, with all the improvements thereon, are to be valued by four judicious, impartial men, to be indifferently chosen by the heirs and as-



signs of the said James Logan, of the one part, and the executors, administrators, and assigns of the said Jonathan Ingham, of the other part, and by how much the true value of the said land and improvements shall in the estimation of the said four persons exceed the rent herein reserved, one full half or moiety of such excess shall be added to the said rent herein reserved, and from that time become a new rent, and shall be yearly yielded and duly paid to the heirs or assigns of the said James Logan, by the executors, administrators, or assigns of the said Jonathan Ingham, on the 1st day of March yearly forever; and in the like manner the like proceedings shall be renewed at the expiration of every term of 121 years forever hereafter." The respondents believe the copy of said indenture annexed to the complainants' bill to be a correct copy.

And these defendants further answering say, that true it is, that by virtue of sundry mesne conveyances, devises, descents, assurances, and proceedings, the said tract of land charged with the ground-rent reserved as above mentioned, has become and now is vested in fee simple in the said defendants; and these defendants are informed and believe that the ground-rent so as aforesaid reserved out of the said tract of land to the said James Logan, his heirs and assigns, has become vested in the Library Company of Philadelphia in trust for the Loganian Library.

And these defendants further answering say, that they wholly deny the allegation in the said complainants' bill of complaint contained; that by the true intent and meaning of the said indenture, the valuation which is to be made at the expiration of the said term of one hundred and seven years, and in like manner at the expiration of every term of one hundred and twenty-one years thereafter, by the persons to be indifferently chosen by the heirs and assigns of the said James Logan of the one part, and the executors, administrators, and assigns of the said Jonathan Ingham of the other part, is a valuation of the fair market value of the fee simple of the said tract of land, with the improvements thereon, free from all incumbrances, and that one-half of the excess of the interest at six per cent. upon that valuation of the fee simple over and above the said rent of

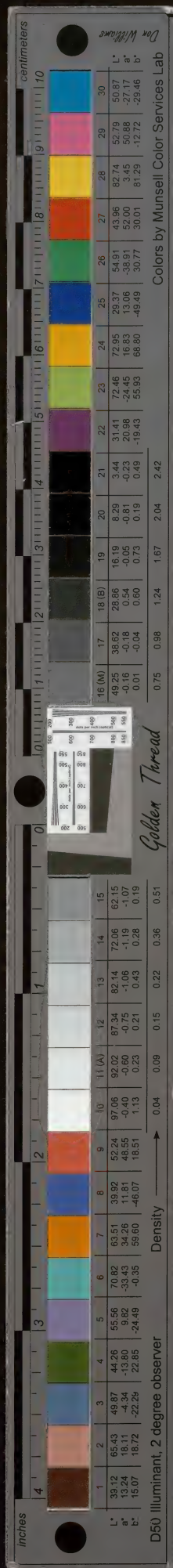
twenty-five pounds sterling, is to be added to that rent, and become a new rent, as averred and charged in the said complainants' bill; but these defendants say, that by the true intent and meaning of the said indenture, the valuation to be made by the four persons to be indifferently chosen as aforesaid, is of the annual rent or value of the premises, after deducting all proper charges, incumbrances, outgoings and expenses, and that one-half of the excess of such newly valued and ascertained rent is to be added to the rent formerly reserved.

And these defendants further answering say, that they have at all times been ready and willing, and are now ready and willing, and have offered repeatedly to the said complainants, to join with them, the said complainants, in choosing, indifferently, four judicious and impartial men, or to choose two such men upon their part, leaving complainants to choose two other such men upon their part, to make such new valuation of the annual rent or value of the premises after deducting all proper charges, and to add one-half of the excess of such newly valued and ascertained rent to the ground-rent formerly reserved in accordance with the provisions and the true intent and meaning of the said indenture, but the complainants have wholly refused, and still unjustly refuse, to accede to the said offer, or to join with the defendants in choosing the said four judicious and impartial men, in order to have the new rent ascertained and fixed in the manner aforesaid, and in accordance with the true intent and meaning of the said indenture, but insist upon the method of valuation which is set forth in their bill, which method these defendants have refused, and do refuse to submit to or be bound by, because the same is not in accordance with the true intent and meaning of said indenture of May 1, 1747, and would greatly prejudice and injure the said defendants.

All which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs.

M. RUSSELL THAYER,

Attorney for Andrew J. Beaumont, John A. Beaumont,
and for Elias Ely, and Oliver Parry, Trustees, &c.



It is agreed between the complainants and defendants that the foregoing answer shall have the same force and effect in all respects as if the same had been duly signed and sworn to by all the defendants. It is further agreed between the complainants and defendants that all the deeds which relate to the transmission of the title to the land or to the ground-rent mentioned in the foregoing bill and answer, be considered as in evidence, in the same manner and with the same effect as if the same had been regularly put in evidence before an examiner appointed by the court, and had been duly reported to the court by him as evidence in the cause. January 19, 1861.

P. McCALL,

For Plaintiffs.

M. RUSSELL THAYER,

For Defendants.

DECREE OF THE COURT OF NISI PRIUS.

THE LIBRARY COMPANY OF PHILADELPHIA,
in Trust for the LOGANIAN LIBRARY,

v.

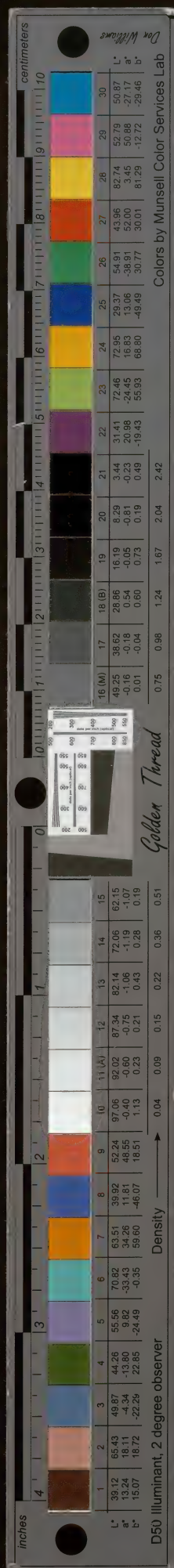
ANDREW J. BEAUMONT et al.

And now, Jan. 26th, 1861, this cause came on to be heard; and thereupon, on consideration thereof, it was ordered, adjudged, and decreed as follows, to wit: That according to the true intent and meaning of the indenture of May 1st, 1747, set forth in the pleadings, the valuation which it is therein provided shall be made at the expiration of the term of one hundred and seven years therein mentioned, and in like manner at the expiration of every term of one hundred and twenty-one years thereafter, by four persons, to be indifferently chosen by the assigns of James Logan and Jonathan Ingham, is of the fair market value of the fee simple of the tract of land conveyed by the said indenture with the improvements thereon

free from all incumbrances, and not of the net annual value of the said tract of land and improvements; and that the plaintiffs are entitled to have one moiety of the excess of the interest at six per cent. upon the said valuation of the fee simple of the said tract of land, and improvements to be made as aforesaid, at the expiration of the said term of one hundred and seven years over and above the present rent of twenty-five pounds sterling, added to the said rent, to become a new rent for the period of one hundred and twenty-one years from the first day of March, 1861. And it is further ordered, that the defendants do choose indifferently two judicious and impartial men on their part, to join with two such men to be chosen by the plaintiffs, to make such valuation as aforesaid of the fee simple of the said tract of land and improvements.

ASSIGNMENT OF ERRORS.

1. The court erred in decreeing, that according to the true intent and meaning of the indenture of May 1st, 1747, set forth in the pleadings, the valuation which it is therein provided shall be made at the expiration of the term of one hundred and seven years therein mentioned, and in like manner at the expiration of every term of one hundred and twenty-one years thereafter, by four persons, to be indifferently chosen by the assigns of James Logan and Jonathan Ingham, is of the fair market value *of the fee simple of the tract of land* conveyed by the said indenture, with the improvements thereon, free from all incumbrances, and *not* of the *annual* value of the said tract of land and improvements; and in decreeing that the plaintiffs are entitled to have one moiety of the excess *of the interest at six per cent. upon the said valuation of the fee simple* of the said tract of land, and improvements over and above the present rent of twenty-five pounds sterling added to the said rent, to become a new rent for the period of 121 years from the first day of March, 1861; and in decreeing that the defendants do choose



two judicious and impartial men on their part, to join with two such men to be chosen by the plaintiffs, to make such valuation of the fee simple of the said tract of land and improvements.

M. RUSSELL THAYER,
For Defendants.

HISTORY OF THE CASE.

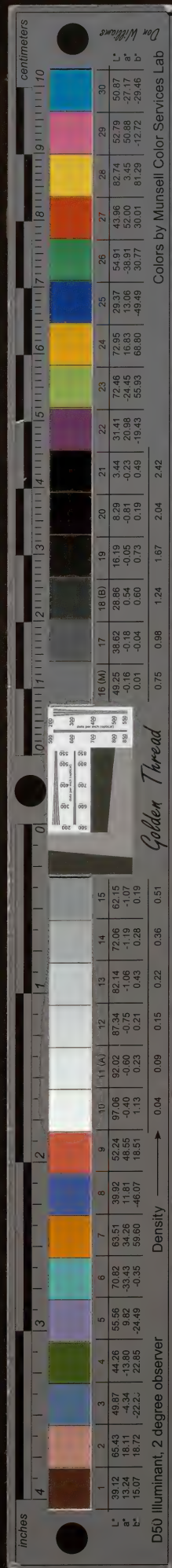
James Logan, by indenture dated May 1, 1747, granted to Jonathan Ingham, his heirs and assigns, forever, a tract of land in Solesbury township, Bucks county, Pennsylvania, containing 396 acres, 120 perches; yielding and paying therefor yearly, to the said James Logan, his heirs and assigns, the yearly rent of 21 pounds sterling, on the 1st day of March in every year, for and during the term of seven years, and from and after the expiration of the said seven years, for and during the term of one hundred years then next ensuing, the yearly rent of 25 pounds sterling on the 1st day of March yearly. The deed contained a provision for the readjustment of the rent at the end of the said 107 years, which provision is in these words:

“After the expiration of the said last mentioned term, that is to say, the term of 107 years from the time of the first entry upon the said land, which will be in the year of our Lord 1860-61, the said tract of land and plantation, with all the improvements thereon, are to be valued by four judicious and impartial men, to be indifferently chosen, by the heirs and assigns of the said James Logan of the one part, and the executors, administrators, and assigns, of the said Jonathan Ingham, of the other part, and by how much the true value of the said land and improvements shall, in the estimation of the said four persons, exceed the rent herein named, one full half or moiety of such excess shall be added to the said rent herein reserved, and from that time become a new rent, and shall be yearly yielded and duly paid to the heirs or assigns of the said James Logan, by the executors, administrators, or assigns, of the said Jona-

than Ingham, on the 1st day of March, yearly forever; and in the like manner the like proceedings shall be renewed at the expiration of every term of 121 years forever hereafter."

The whole deed is printed in the Appendix, page 19. By a supplemental deed, indorsed upon the foregoing, and dated May 5, 1747 (printed in Appendix, page 23), reciting that whereas, there was a prospect of a mine of copper ore being found upon the premises granted by the deed of May 1, 1747; and whereas, it had been agreed between the said James Logan and Jonathan Ingham, that the profits of any ore found should be divided equally between the said James Logan and Jonathan Ingham, their heirs and assigns; but the said agreement having been omitted from the deed through forgetfulness, it was stipulated, in order to rectify the said omission, that the said James Logan, his heirs and assigns, should have *the half part of all such ore as should be found in the premises covered by the deed of May 1, 1747.*

By indenture, dated March 25, 1760, between William Logan, James Logan (sons of James Logan, deceased), John Smith, and Hannah, his wife (the said Hannah being the surviving daughter of the said James Logan, deceased; and they, the said William Logan, James Logan, and John Smith, being the surviving executors of James Logan, deceased), of the one part, and Israel Pemberton, William Allen, Richard Peters, and Benjamin Franklin, of the other part; the rent reserved by the deed of May 1, 1747, from James Logan to Jonathan Ingham were, *inter alia*, conveyed to the said Israel Pemberton, William Allen, Richard Peters, and Benjamin Franklin, their heirs and assigns, in trust for the Loganian Library. "*Excepting and always reserving unto the heirs and assigns of the said testator, James Logan, all the mines or shares of mines, on the said tract; the same mines or shares not being intended to be granted with the rents aforesaid*" (see Appendix, p. 25). The plaintiffs are now trustees for the Loganian Library, to which the rents belong. The land out of which the rent was reserved by the deed of May 1, 1747, now belongs to the defendants.



It is agreed between the counsel of the respective parties, that all the deeds which relate to the transmission of the title to the land, or to the ground-rent, be considered in evidence.

By one of these deeds, dated April 4, 1803 (Appendix, p. 25), Samuel D. Ingham and wife, and Anna Tilghman, widow of Jonathan Ingham, grantee of James Logan, conveyed a part of the land in question to Hugh Ely in fee, "subject to a ground-rent or annuity, payable the first day of March yearly, forever, to be governed and regulated as follows, viz., the sum of 21 pounds sterling yearly, during seven years ending the 1st March, 1761, and the sum of 25 pounds sterling yearly, during one hundred years ending the 1st March, 1861, and at the expiration of the said term of one hundred years, a computation of the increased *yearly value* of the said land and appurtenances, being made by four judicious, impartial men, indifferently chosen by the said parties, one-half of the excess beyond the yearly rent or annuity for the last one hundred years to be added to the said rent or annuity of 25 pounds sterling, and be the rent or annuity for one hundred and twenty-one years thence ensuing."

In another deed, from Samuel D. Ingham and wife to Horatio Nelson Beaumont (Appendix, p. 25), conveying another part of said land, subject to the said ground-rent, the proceedings for the readjustment of the ground-rent after the 1st March, 1861, is recited in the same words as in the last-mentioned deed, viz., as "a computation of the increased *yearly value* of the said land and appurtenances."

The plaintiffs insisting upon the construction of the deed of May 1st, 1747, which is set forth in their bill, called upon the defendants to join with them in a submission to referees of the question of the *value of the fee simple* of the land. The defendants refused, but say that they are ready and willing, and always have been ready and willing, to join with the plaintiffs in a submission to referees of the question of the *annual value* of the land, which *annual value* they contend to be the true standard by which the computation of the new rent in the manner indicated by the deed is to be made.

The plaintiffs thereupon filed their bill, and the defendants put in their answer. The cause was not argued before the judge at Nisi Prius.

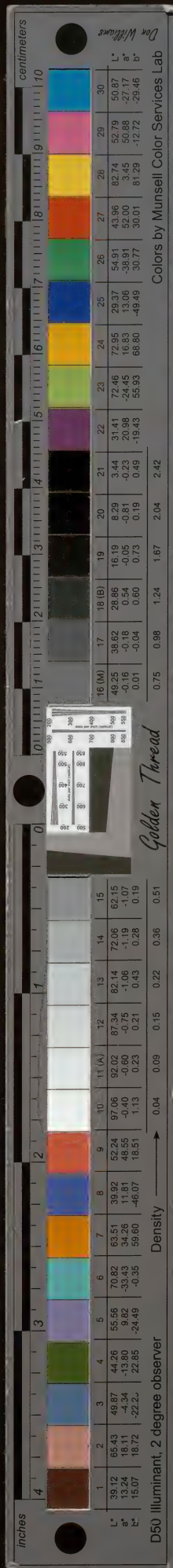
ARGUMENT FOR DEFENDANTS.

The question is, In what manner is the new rent to be valued and ascertained?

The plaintiffs contend that the referees are to value the fee simple of the land, free from all incumbrances; that they are then to calculate six per cent. interest upon that value, and to add one-half of the excess of such interest over the old rent to the old rent.

The defendants contend that the referees are to ascertain the present *annual* value of the land, that is, what sum would now be a fair and just rent for it, and to add one-half of the excess of such value over the old rent to the old rent. They contend that the referees are not bound to fix the new rent by the process of calculating interest at the rate of six per cent. upon the gross value of the land, but that they are to fix the new rent by ascertaining the present annual value of the land, which annual value is to be arrived at by examination of witnesses, examination of the property, and by any other evidence which may assist them in the inquiry.

The defendants submit to the court that there can be no doubt upon the language of the deed, that the new rent is to be adjusted by ascertaining the annual value of the land at the expiration of the 107 years, and adding to the old rent one-half of the excess of the new value over the old rent. The words are, "*And by how much the true value of the said land and improvements shall, in the estimation of the said four persons, exceed the rent herein reserved, one full half or moiety of such excess shall be added to the said rent herein reserved.*" The words "true value of the said land" plainly do not mean the gross value of the land or of the fee simple. That would



be an absurd construction of the contract, because it would require the payment of a rent equal to more than one-half of the value of the fee simple. The plaintiffs do not and could not contend for such a construction. If, then, the words "true value of the said land" do not mean the gross value of the land or of the fee simple, they can mean but one thing else, viz., the *annual* value of the land. If, then, it is one-half of the excess of the *annual* value which is to be added to the old rent, clearly that which is to be ascertained and valued by the referees is the *annual* value, and not the value of the fee simple.

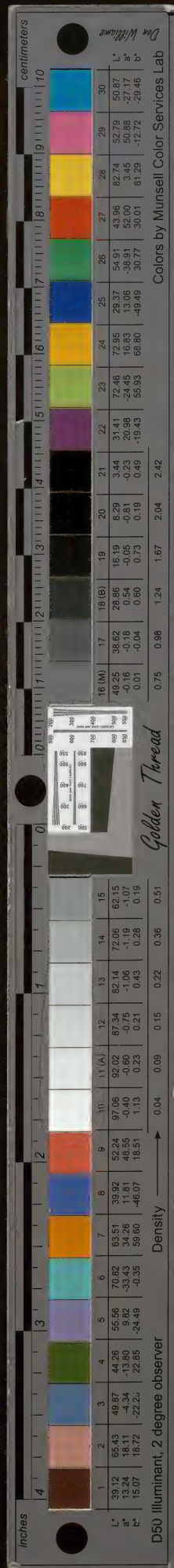
But the plaintiffs say, that this annual value is to be ascertained by calculating six per cent. interest upon the value of the fee simple. But why is it to be ascertained by any such arbitrary rule of calculation? The deed does not mention this method of calculation. It says nothing about interest or interest at the rate of six per cent. Is the annual value of farm lands truly represented by calculating interest upon the value of the fee simple at the rate of six per cent.? We all know that it is not. Farm lands do not ordinarily yield six per cent. upon their value. Why then should six per cent. be considered a fair measure of the annual value when it is notoriously true that they do not rent at any such rate? The method of valuation proposed by the plaintiffs is, therefore, not reasonable, because farm lands do not usually rent at six per cent. upon their gross value. If six per cent. sometimes represents fairly the annual value, it does not follow that these lands would rent for or would be worth any such sum. Why then should the referees be confined to that method of valuation? It is a method *not prescribed by the deed*, but only suggested by the plaintiffs? Why then should the referees be bound to exclude all evidence of the *true* and *real* annual value, and resort to an arbitrary method of valuation, which may or may not express the true annual value? Why should they be compelled to do that, when the deed does not point out any such method of valuation as that which is insisted upon by the plaintiffs? If the parties to the contract had intended to fix the annual value of the lands by a calcula-

tion of six per cent. interest upon the value of the fee simple, would they not have said so in the deed? Why should the annual value be fixed at six per cent. rather than four per cent., five per cent., or seven per cent.? Could the parties to the contract know that six per cent. would be the lawful rate of interest 114 years after the making of the contract? Could they know that either lands or money would be worth six per cent. rather than five or seven per cent., more than a century after the contract was made?

If it be said in reply to this, that the deed says that the "land and improvements are to be valued," the reply is, that we are not to take these words by themselves, but we are to seek for the true intention of the parties in the object which they had in view, and in all the circumstances of the case. *Qui haeret in littera haeret in cortice*. The words which immediately follow show that the intention of the parties was, that what was to be added to the old rent is one-half of the excess of the *annual* value. Therefore the thing to be fixed is the annual value; and this by the exercise of the best judgment of the referees, in view of all the evidence which could be produced to them upon the subject of the annual value, and not by any such arbitrary rule as that contended for by the plaintiffs. When, therefore, the deed says that the "lands and improvements are to be valued," it clearly means that the *annual* value of the lands and improvements is to be ascertained at the end of the 107 years; for it is immediately added, "and by how much the true value of the said land and improvements shall, in the estimation of the said four persons, exceed the rent herein reserved, one full half or moiety of such excess shall be added," &c.

It is admitted by the plaintiffs, that what is to be added is the half of the excess of the annual value over the old rent. If, therefore, *that* is the thing to be added, it follows that the thing to be valued is not the fee simple, but the annual value of the lands.

Besides, this process of revaluing the annual rent is to be repeated at the expiration of every one hundred and twenty-



one years. Now could the parties have supposed that any rate of interest which they could prospectively fix upon the value of the fee simple would express the true annual value of the lands so long as the world should stand? If they did, and intended that to be the rule, why did they not say so? Why were they totally silent upon the subject of any rate of interest? And if they were silent, why should those words be now interpolated into a contract which does not speak of such method of adjustment?

Again, it will be seen, by reference to the deed from the heirs and executors of James Logan, conveying this rent to the Trustees of the Loganian Library, that they expressly excepted from the grant, and reserved to themselves James Logan's interest in the mines and ores found upon the property, which mines and ores he had secured to himself by the deed indorsed upon the deed of May 1, 1747, and dated May 5, 1747. The method of valuation contended for by the plaintiffs would give them, therefore, interest upon a part of the property which does not belong to them, and in which they have no interest whatever. Why should the annual rent to which the plaintiffs are entitled be fixed by calculating interest upon a part of the property in which they have no interest, and from which they are entitled to no rent?

Again, the annual value of the lands is much diminished by the restriction in the deed of May 1, 1747, which prevents the owners from clearing more than three-fourths of the tract. Why should interest be calculated at the rate of six per cent. upon the one-fourth which cannot be improved? Is that one-fourth worth six per cent.? If not, why should the annual value of that be arrived at by a calculation of six per cent. upon it?

In the case of *Farley v. Craig* (6 Halsted, 263), another deed of this same James Logan (who appears to have had a fancy for this peculiar kind of conveyance), containing provisions similar in all respects to the one now under examination, came before the Supreme Court of New Jersey. The point for consideration there was the nature and extent of the estate

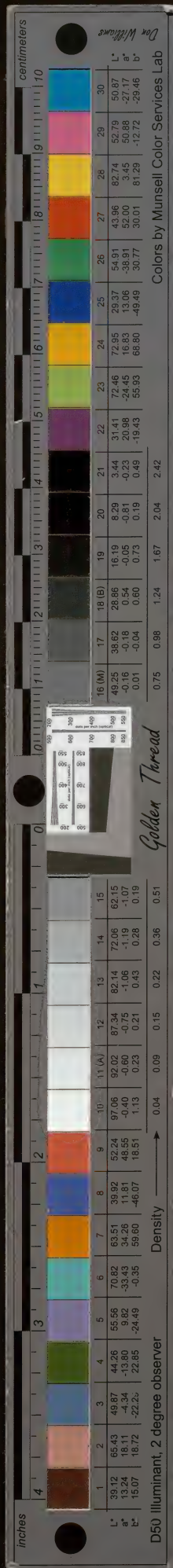
conveyed; but the learned judge who delivered the opinion of the court, in speaking of this provision relative to the revaluation, describes it as a valuation of the *yearly* value of the land. His language in describing it is, "and after the expiration of the last-mentioned term, that is to say, the term of one hundred and twenty-one years from the time of the first entry on the land, which will be in the year 1857, the full *yearly* value of the land, with its improvements, is to be fairly estimated, and a moiety of what it exceeds the last-mentioned rent is to be added to the last-mentioned rent and become a new rent." (6 Halsted, p. 264.) Though not a decision upon the point here raised, this language shows very plainly that the court in that case understood by this provision that the thing to be estimated was the *yearly* value of the land.

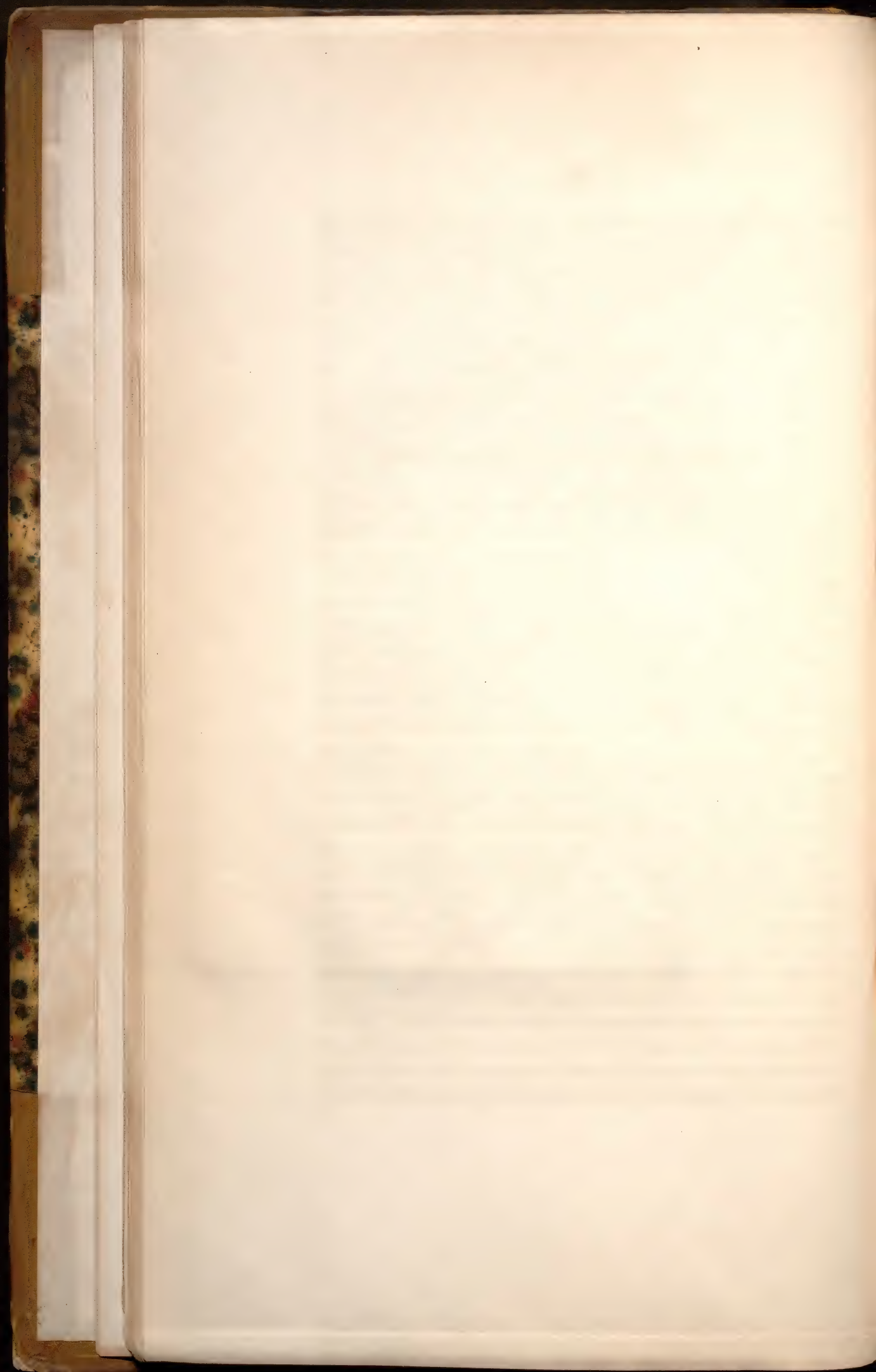
If the *yearly* value is the thing to be ascertained, why should not the referees be permitted to ascertain it according to the truth? And why should they be confined to a method of ascertaining it which is not stipulated for in the deed, which is arbitrary in its character, and does not, as the defendants contend, express the true value? Why should the court be asked to make a contract for the parties which they have not made for themselves?

For these reasons it is respectfully submitted that the plaintiff's bill ought to be dismissed, and the referees left to value the new rent according to the annual value of the land in the method pointed out by the deed.

The decree at Nisi Prius was made without argument, and for the purpose of enabling the parties to have the cause decided by the Supreme Court at the present term. The cause is therefore to be considered as being now heard for the first time by all the judges.

M. RUSSELL THAYER,
For Defendants.



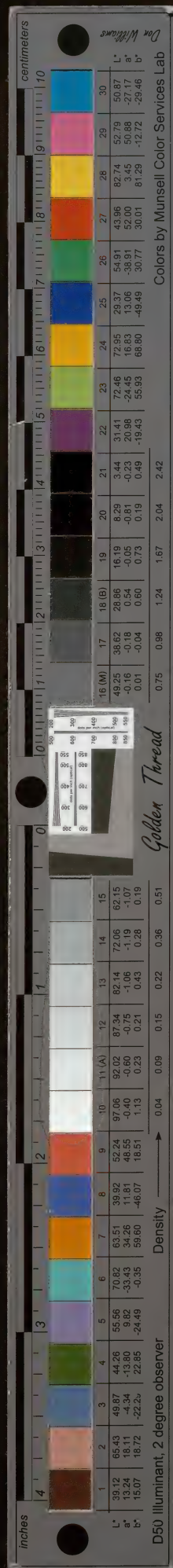


APPENDIX.

(A.)

Deed from James Logan to Jonathan Ingham.

THIS INDENTURE, made the first day of May, in the year of our Lord one thousand seven hundred and forty-seven, between James Logan, of Stenton, in the county of Philadelphia and province of Pennsylvania, gentleman, of the one part, and Jonathan Ingham, of the township of Solesbury, in the county of Bucks and province aforesaid, fuller, of the other part, witnesseth, that the said James Logan, for and in consideration of the payment of the several rents hereinafter reserved, and performance of the covenants and agreements hereinafter mentioned, which, on the part and behalf of said Jonathan Ingham, his heirs and assigns, are or ought to be observed, performed, and kept, hath granted, bargained, sold, enfeoffed, and confirmed, and by these presents doth grant, bargain, alien, enfeoff, and confirm unto the said Jonathan Ingham, a certain piece or tract of land, situate in the said township of Solesbury, in the county of Bucks and province aforesaid, beginning at a corner post in the land late of Thomas Canby, deceased, formerly belonging to Robert Heath, and from thence running south forty-four degrees (44°) west two hundred and thirty perches (230 p.) to a post, being a corner of the land formerly leased to Benjamin Jennings, but now in the occupation of Jacob Dean; thence, by the line of the said Jacob Dean, north forty-seven degrees (47°) west two hundred and seventy-six perches (276 p.), to another corner of the said Jacob Dean's land; thence forty-four degrees (44°) east, by William Scarbrough's land, two hundred



and thirty perches (230 p.), to a black oak in the land of the now or late Lancelot Martin's land; thence, by the said Martin's and Thomas Canby's land, south forty-seven degrees (47°) two hundred and seventy-six perches (276 p.), to the place of beginning; containing three hundred ninety-six acres (396 ac.) and one hundred and twenty perches (120 p.) of land; together with all and singular the buildings, improvements, wags, waters, streams of water, water-courses, woods, underwoods, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, and the reversions and remainders thereof; to have and to hold the said tract of land and premises hereby granted, from and after the first day of March, in the year of our Lord one thousand seven hundred and fifty-three (four), unto the said Jonathan Ingham, his heirs and assigns, to the use and behoof of him the said Jonathan Ingham, his heirs and assigns, forever; yielding and paying therefor yearly unto the said James Logan, his heirs and assigns, the yearly rent or sum of twenty-one pounds sterling, in English money, or in foreign good-coined silver or gold equivalent to the same, on the first day of March in every year, for and during the full term of seven years, the first payment whereof to be made on the first day of March, which will be in the year of our Lord one thousand seven hundred and fifty-four (five); and yielding and paying unto him the said James Logan, his heirs and assigns, from and after the expiration of the seven years, for and during the full term then next ensuing, the yearly rent or sum of twenty-five pounds sterling, in money aforesaid, in the manner aforesaid, on the first day of March yearly, the first payment of which said last-mentioned rent to be made on the first day of March, in the year of our Lord one thousand seven hundred and sixty (sixty) one; and after the expiration of the said last-mentioned term, that is to say, the term of one hundred and seven years from the time of the first entry on the said land, which will be in the year of our Lord one thousand eight hundred and sixty (sixty) one, the said tract of land and plantation, with all the improvements thereon, are to be valued by four judicious, impartial men, to be indiffe-

inches		centimeters																								
1		2		3		4		5		6		7		8		9		10								
1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15												
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	87.34	82.14	72.06	62.15												
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.07												
b*	15.07	18.72	-22.26	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28												
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ham, his heirs and assigns, shall and will, from time to time, and at all times forever hereafter, well and truly pay or cause to be paid unto the said James Logan, his heirs or assigns, every of the aforesaid yearly rents hereby reserved according to the days and times hereinbefore appointed for payment thereof in manner and form aforesaid. Provided always, nevertheless, that if any of the rents hereby reserved shall be in arrears and unpaid for the space of twelve months next after the day whereon the same ought to be paid, and no distress sufficient to satisfy the same can be found, and taken in or upon the hereby granted premises when it shall and may be lawful to and for the said James Logan, his heirs and assigns, unto and upon the herein granted tract of land and premises, and the buildings thereon erected, or to be erected, and into every part thereof, with all the appurtenances, wholly to re-enter, and the same then and thenceforth to have again, repossess and enjoy as in his or their former estate and title; and the said Jonathan Ingham, his heirs and assigns, thereout and from thenceforth utterly to expel, amove, and put out until the said arrears, with all the charges thereon, are fully satisfied and paid; and the said Jonathan Ingham, his heirs or assigns, shall within the first twenty-one years of the said term clear no more than three-fifth parts of the said tract of land; and forever thereafter clear no more than three-fourth parts of the said tract of land; and forever thereafter clear no more than three-fourth parts of the said tract of land hereby granted; and the other one-fourth part thereof shall be left for a supply of fencing and firing, after the other time being insufficient, and shall not destroy nor waste any timber except what is necessary for clearing aforesaid; nor shall the land so cleared after the first two years from the time of the first clearing be impoverished by sowing oftener than once in three years for any sort of grain (buckwheat or Indian corn excepted); and the said James Logan, for himself, his heirs, executors, and administrators, doth covenant, promise, and grant to and with the said Jonathan Ingham, his heirs and assigns (paying the aforesaid yearly rents hereby reserved) respectively, according to the days and times herein-

before appointed for payment thereof, and performing all and singular the covenants and agreements aforesaid, which on their parts and behalf are or ought to be observed, performed, and kept according to the true meaning hereof (shall or lawfully may at all times hereafter forever), commencing as aforesaid, freely, quietly, and peaceably have, hold, and enjoy the said described tract of land and premises hereby granted or mentioned so to be, with the appurtenances without the lawful let, suit, trouble or molestation of him, the said James Logan, his heirs or assigns, or any other person or persons by or with his or their privity, consent, or procurement.

In witness whereof, the said parties to these presents have interchangeably set their hands and seals thereto, dated the day and year first above written.

JAMES LOGAN, [SEAL.]

Sealed and delivered in presence of us:

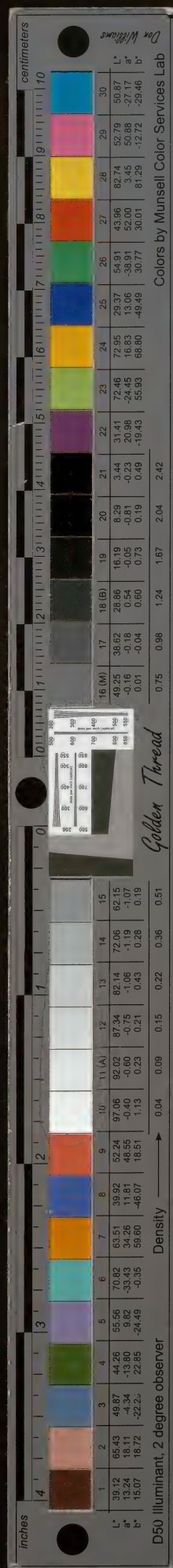
THOMAS ARMSTRONG,

JOHN ARMSTRONG,

CHRISTIAN LEHMAN.

Deed indorsed on the foregoing Deed.

Whereas the parties within mentioned at the time they agreed on the within articles, did likewise agree, that as there is a prospect of a mine of copper ore that may be probably found within the bound of the within granted land, the profits of which the within named James Logan reserved altogether to himself in the lease that he granted for 200 acres, part of the within mentioned tract to Jonas Ingham, father of the within named Jonathan Ingham; but on the said agreement that the said profits, if any ore should be found, should from the within mentioned first day of March, 1753-4, be divided between the said James Logan and Jonathan Ingham, their heirs and assigns, in equal shares; yet, by mere forgetfulness the same was omitted to be inserted in the articles given to the clerk to draw the within written lease. Now, to rectify the said mistake and omission it is hereby further covenanted between the within named James



Logan and Jonathan Ingham, in behalf of themselves, their heirs and assigns, that the said James Logan, as he now has the sole privilege, so after the said first day of March, 1753-4, shall have lawful equal half part, share, and privilege of all such ore as shall be found within the said land, and accordingly the said Jonathan Ingham for himself, his heirs and assigns, doth hereby grant and convey unto the said James Logan, his heirs and assigns one full moiety or half part of all such copper or lead ore as shall at any time be found after the said first day of March, 1753-4, within the bound of the within granted land, with the full privilege of his and theirs, walkeneys at all times hereafter to view the said land, to hold the said moiety of all such copper or lead ore to the said James Logan, his heirs and assigns, to their own proper use and behalf forever.

In witness whereof, the said parties to these presents have set their hands and seals hereto, the fifth day of May, in the year of our Lord one thousand seven hundred and forty-seven.

JAMES LOGAN, [SEAL.]

Sealed and delivered in the presence of us:

his

JACOB + DEAN,

mark.

CHRISTIAN LEHMAN.

Probate of deed and of indorsed deed annexed, dated Nov. 21, 1772.

Recorded in Bucks county, in Deed Book No. 14, p. 408, &c.

The following deeds were also in evidence by agreement of counsel:

INDENTURE, dated March 25, 1760. William Logan, James Logan (son of James Logan, deceased), John Smith, and Hannah his wife (the said Hannah being the surviving daughter of the said James Logan, deceased), and they the said William Logan, James Logan, and John Smith, being the surviving executors of James Logan, deceased), to Israel Pemberton, William Allen, Richard Peters, and Benjamin Franklin, in fee

in trust, for the "Loganian Library," for *inter alia*, the rent reserved by the deed of May 1, 1747, from James Logan to Jonathan Ingham, "excepting and always reserving unto the heirs and assigns of the said testator James Logan, all the mines or shares of mines on the said tract, the same mines or shares not being intended to be granted with the rents aforesaid."

Acknowledged Sept. 19, 1792.

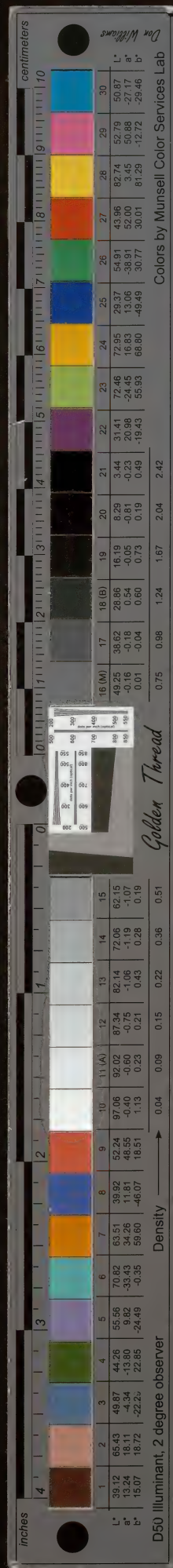
Recorded in Bucks county, in Deed Book No. 39, p. 206, &c.

INDENTURE, dated April 4, 1803. Samuel D. Ingham and wife and Anna Tilghman, widow of Jonathan Ingham, grantee of James Logan, to Hugh Ely, in fee, for 84 acres and 10 perches of the said tract of 396 acres 120 perches, conveyed by James Logan to Jonathan Ingham, by deed of May 1st, 1747, "subject to a ground-rent or annuity, payable the first day of March, yearly, forever, to be governed and regulated as follows, viz.: the sum of 21 pounds sterling, yearly, during seven years, ending the 1st March, 1761, and the sum of 25 pounds sterling, yearly, during one hundred years, ending the 1st March, 1861; and at the expiration of the said term of 100 years a computation of the increased yearly value of the said land and appurtenances being made by four judicious impartial men, indifferently chosen by the said parties, one-half of the excess beyond the yearly rent or annuity for the last 100 years to be added to the said rent or annuity of 25 pounds sterling, and be the rent or annuity for 121 years thence ensuing; and at the expiration of said term of 121 years, the like proceedings to take place to establish a rent or annuity for 121 years thence ensuing, and in like manner from time to time on the expiration of every succeeding 121 years, forever."

Acknowledged April 4, 1803.

Recorded in Bucks county, in Deed Book No. 41, p. 261, &c.

INDENTURE, dated March 27, 1849. Samuel D. Ingham and wife to Horatio Nelson Beaumont, in fee for 309 acres, part of said tract of 396 acres 120 perches, conveyed by James Logan



to Jonathan Ingham, by deed of May 1, 1747, subject to a ground-rent or annuity payable the 1st day of March, yearly, forever, to be governed and regulated as follows, viz.: the sum of 21 pounds sterling, &c. (the same words as in the last preceding deed), and at the expiration of the said term of 100 years a computation of the increased yearly value of the said land and appurtenances being made by four judicious, impartial men, &c., &c. (the same words as in the last preceding deed.)

Acknowledged March 28, 1849.

Recorded in Bucks county, in Deed Book No. 79, p. 302, &c.



centimeters

0 1 2 3 4 5 6 7 8 9 10

inches

0 1 2 3 4

D50 Illuminant, 2 degree observer

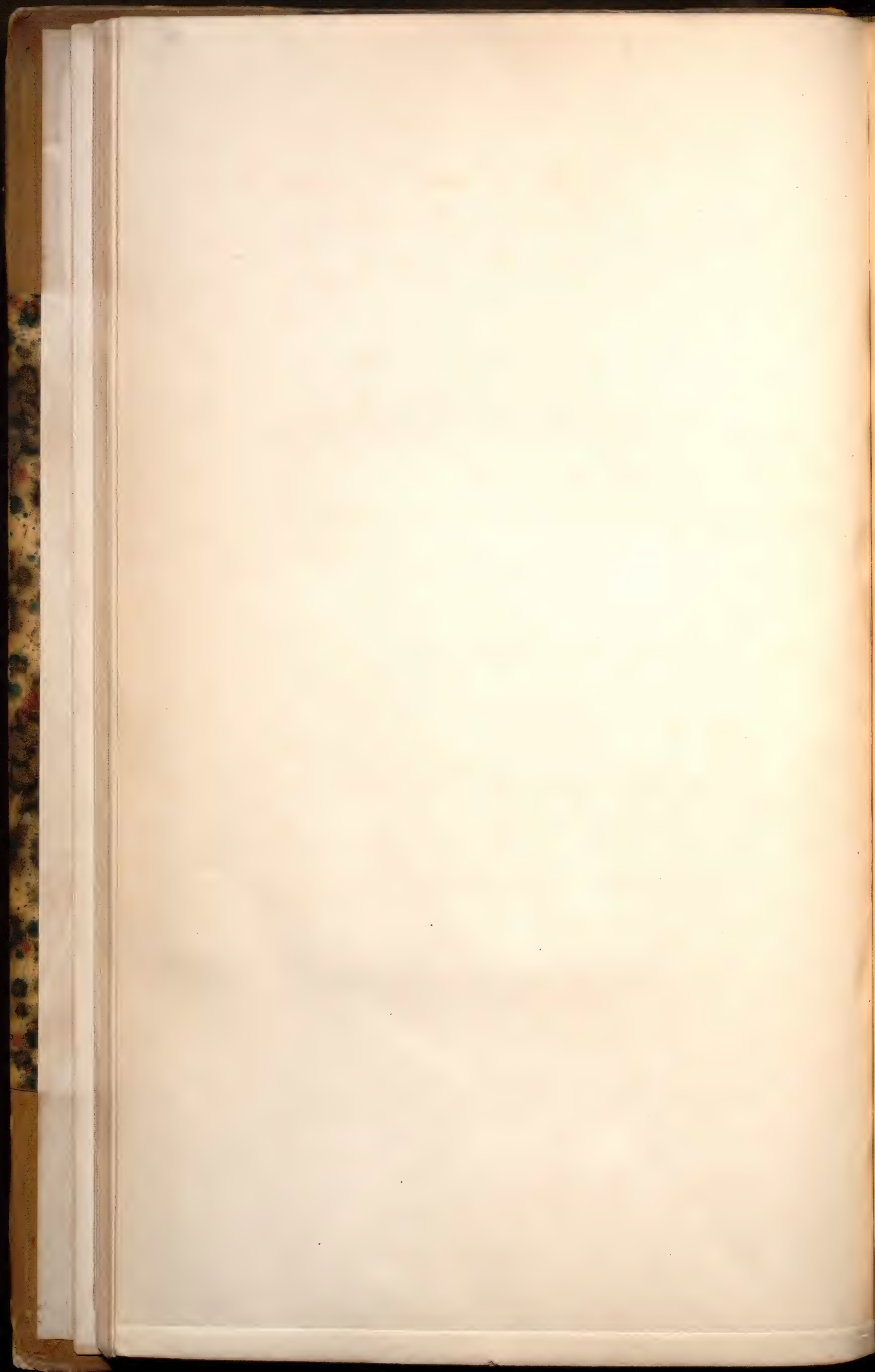
	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15	
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15	
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07	
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19	
Density											0.04	0.09	0.15	0.22	0.36	0.51

Golden Thread

Don Williams

Colors by Munsell Color Services Lab

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46



0.4

No Jay Smith
(To be returned.)

THE LIBRARY COMPANY OF PHILADELPHIA

vs.

ANDREW J. BEAUMONT, et al.

DECREE OF THE COURT OF NISI PRIUS.

centimeters

10 9 8 7 6 5 4 3 2 1 0

1 2 3 4 5 6 7 8 9 10

inches

1 2 3 4 5 6 7 8 9 10

Colors by Munsell Color Services Lab

D50 Illuminant, 2 degree observer

Density

Golden Thread

	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-39.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.60	-49.49	30.77	30.01	81.29	-12.72	-29.46

Wm. J. Smith

June 18 1864

Received of Mr. J. H. Smith

the sum of \$100.00

for the purchase of land

in the county of...

State of...

Witness my hand and seal...

DECREE OF THE COURT OF NISI PRIUS.

THE LIBRARY COMPANY OF
PHILADELPHIA, in trust for
THE LOGANIAN LIBRARY,

IN EQUITY.

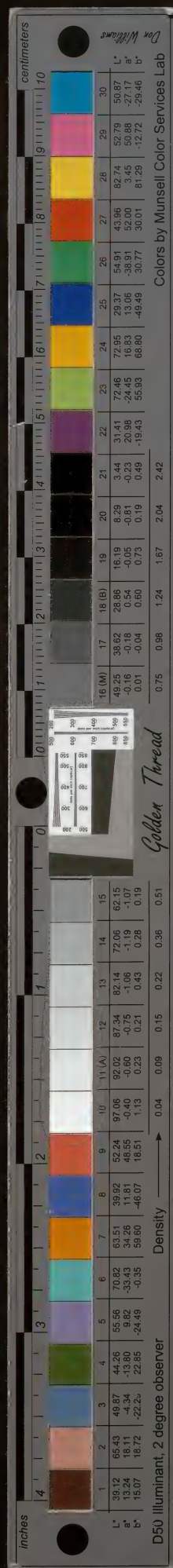
January Term, 1861.

vs.

ANDREW J. BEAUMONT, *et al.*

No. 32.

And now, January 26, 1861, this cause came on to be heard; and thereupon, on consideration thereof, it was ordered, adjudged and decreed, as follows, to wit: That according to the true intent and meaning of the Indenture of May 1st, 1747, set forth in the pleadings, the valuation which it is therein provided shall be made at the expiration of the term of one hundred and seven years therein mentioned, and in like manner at the expiration of every term of one hundred and twenty-one years thereafter, by four persons to be indifferently chosen by the assigns of James Logan and Jonathan Ingham, is of the fair market value of the fee simple of the tract of land, conveyed by the said Indenture, with the improvements thereon free from all incumbrances, and not of the net annual value of the said tract of land and improvements, and that the plaintiffs are entitled to have one moiety of the excess of the interest at six per cent. upon the said valuation of the fee simple of the said tract of land and improvements, to be made, as aforesaid, at the expiration of the said term of one hundred and seven years, over and above the present rent of twenty-five pounds sterling, added to the said rent, to become a new rent for the period of one hundred and twenty-one years, from the first day of March, 1861. And it is further ordered, that the defendants do choose indifferently two



judicious and impartial men on their part, to join with two such men to be chosen by the plaintiffs, to make such valuation as aforesaid, of the fee simple of the said tract of land and improvements.

The Library Company of Philadelphia } *In Equity.*
 vs. }
Andrew J. Beaumont, et. al. } *From Nisi Prius.*

OPINION OF THE COURT, BY THOMPSON, J.

The plaintiffs below are the owners by a devise from James Logan, in trust for the Loganian Library, of a ground rent reserved by the testator in a tract of 396 acres and 120 perches of land in Solesbury Township, Bucks County, and the defendants claim title to the land, subject to rent under and by virtue of sundry conveyances and descents from Jonathan Ingham, the original grantee.

The original rent reserved, in 1747, was £21 sterling, which, by a covenant in the deed of the land, was to remain a rent charge for the period of one hundred and seven years, when a re-valuation of the land and improvements was to be made, and half the increased value was to be added to the existing ground rent, which was to be the rent for another period of one hundred and twenty-one years and so on under periodical valuation at intervals of one hundred and twenty-one years, forever.

The difficulty here has arisen in a difference of opinion as to the mode of valuation to be adopted. Is it to be according to the estimated *annual value* of the premises, or by a valuation of the fee of the land and improvements, half the interest of which to be added to the preceding rental? The plaintiffs contend for the latter and the defendants for the former.

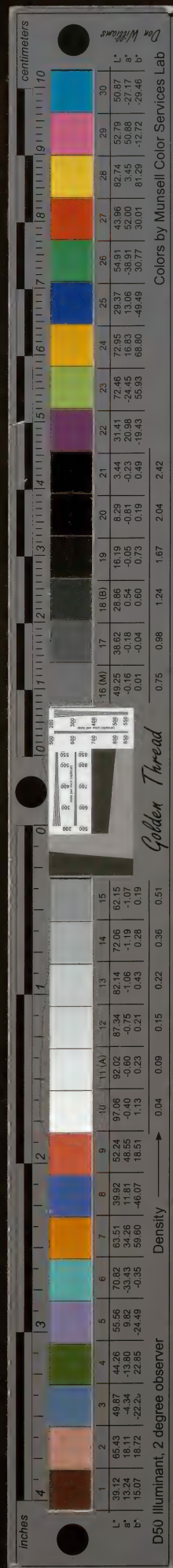
The words in the deed in which the difficulty has arisen

are as follows: At the end of the first period, which was to be in 1861, "the said tract of land and plantation, with all the improvements thereon, are to be valued, by four judicious men, to be indifferently chosen by the heirs and assigns of the said James Logan, of the one part, and the executors, administrators and assigns of the said Jonathan Ingham, of the other part; and by how much the *true value* of the said land and improvements shall, in the estimation of the said four persons, exceed the rent herein reserved, one full half or moiety of such excess shall be added to said rent reserved, and from that time become a new rent," and be paid, yearly, to the heirs and assigns of the grantor for a further period of one hundred and twenty-one years, and so on forever.

In construing this reservation we should bear in mind that the parties had in view the creation of a ground rent, unextinguishable, but subject at long intervals to be changed and increased by a re-valuation of the property out of which it was to issue. This the parties might legally do, although it is somewhat novel.

In conveying land on ground rent a valuation of the premises in some cases is necessary. This fixes what may be called the capital, and a rate of interest agreed upon ascertains the rent reserved. If extinguishable, the capital which would produce an interest equal to the rent would be the sum necessary to be paid to extinguish the charge. This is the usual course of such transactions, and we have not a word to show that any different mode for ascertaining the rent was to be observed. If the words allow it, then the construction will be that the usual mode was intended.

The deed to the grantees provides, "that the land and plantation with all the improvements thereon are to be valued," not at what they would rent for by the year; the words used have a greater scope than this, and there is nothing else where discoverable which would qualify them. The suggestion that 6 *per cent.* is too high a rent for a farm may be true, or not, owing to many circumstances. It



might be a high rent now, and a very low one fifty or a hundred years hence. This consideration is too vague to be allowed to alter the obvious import of the words used. Having valued the land and plantation, then the future rent is to be ascertained, by *so much* as the "*true value*" of said land and improvements "shall exceed the rent reserved, by adding one full half or moiety of such excess" to the existing rent. The valuation is to get at a capital, the interest of which is to be the rent reserved. It is not pretended that the half value of the premises is to be paid as rent every year. This would be absurd, but the fee was to be valued to get at the sum the half of the interest would represent, which being added to the existing rent, was to be the future charge.

The words used, and the object intended, both look to this as the meaning of the parties. There are certainly no words limiting the valuation to what the farm would rent per year, which would involve calculations for taxes and repairs, as contended for by the defendants. The consideration that 6 per cent. would be a high rent we have seen is not sufficient to require the interpretation contended for. On the other hand, in addition to the difficulty in estimating what the taxes might be and the repairs in the future, the process might result in great injustice, as has been well suggested by the plaintiff's counsel, by letting the farm and improvements so run down at the period for estimating the annual value as to be of little worth. Thus, although the fee might have greatly appreciated in the general prosperity of the country, or advance of property in the neighborhood, the rental might be very little if any advanced. Tested by the words used, and supported by the object of the parties and the mode in which such matters are usually transacted, we think the decree at *Nisi Prius* was based on the true construction to be given to the deed.

I do not appreciate the difficulty suggested, of the possible change of the rate of interest. It is the same now that it was one hundred and seven years ago, when the

ground rent was reserved, and we can predicate nothing of the possible contingency that the rate per cent. may be changed. If it shall be so before 1982, the period of the next valuation, we may trust the court of that day to discover the proper rate per cent. on the capital necessary to constitute the rent by the law regulating the rate which existed at the making of the covenants.

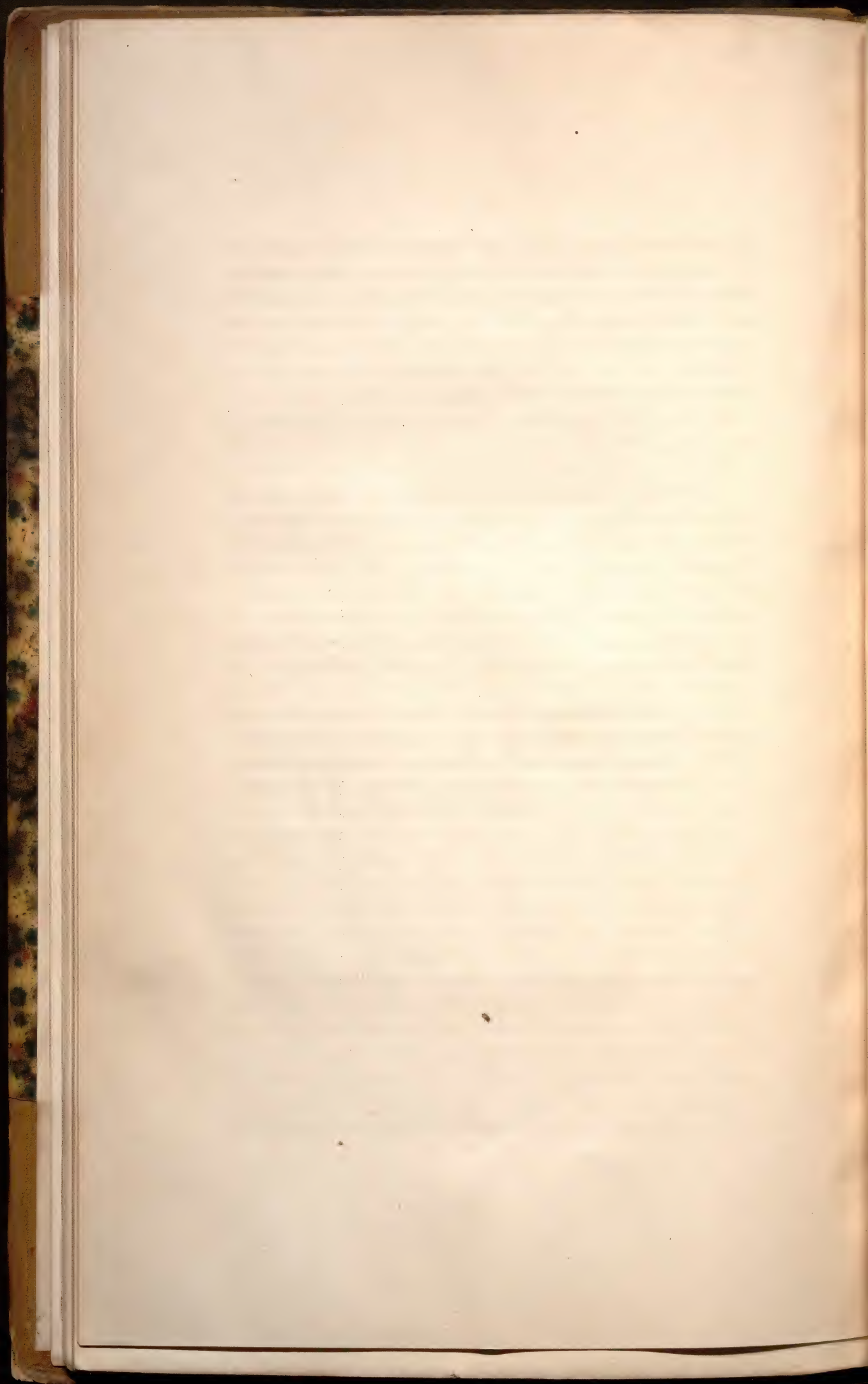
The decree at Nisi Prius is affirmed at the costs of the Appellants.

I certify the foregoing to be a true, full and accurate copy of the Decree of the Court of Nisi Prius, and the Opinion of the Supreme Court, on appeal delivered by THOMPSON, J., on the sixth day of May, A. D., 1861, in the case of The Library Company of Philadelphia in trust for the Loganian Library *vs.* Andrew J. Beaumont, et al., in the Supreme Court of Pennsylvania, for the Eastern District of January Term, 1861. No. 32. In Equity.

In testimony whereof, I have hereunto set my
[SEAL.] hand and affixed the seal of the Supreme Court of Pennsylvania for the Eastern District, at Philadelphia, this fourteenth day of May, A. D., 1861.

JOHN F. BELSTERLING,
Pro Proth.







Color calibration chart and ruler.

inches

0 1 2 3 4

centimeters

0 1 2 3 4 5 6 7 8 9 10

D50 Illuminant, 2 degree observer

	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19
Density	→ 0.04 0.09 0.15 0.22 0.36 0.51														

Golden Thread

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46
Density	0.75	0.98	1.24	1.67	2.04	2.42									

Colors by Munsell Color Services Lab





inches 4 3 2 1 0

centimeters 10 9 8 7 6 5 4 3 2 1 0

Golden Thread

Colors by Munsell Color Services Lab

D50 Illuminant, 2 degree observer

	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15	
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15	
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b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19	
Density											0.04	0.09	0.15	0.22	0.36	0.51

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a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46
Density	0.75	0.98	1.24	1.67	2.04	2.42									





centimeters

inches

Golden Thread

D50 Illuminant, 2 degree observer

Density

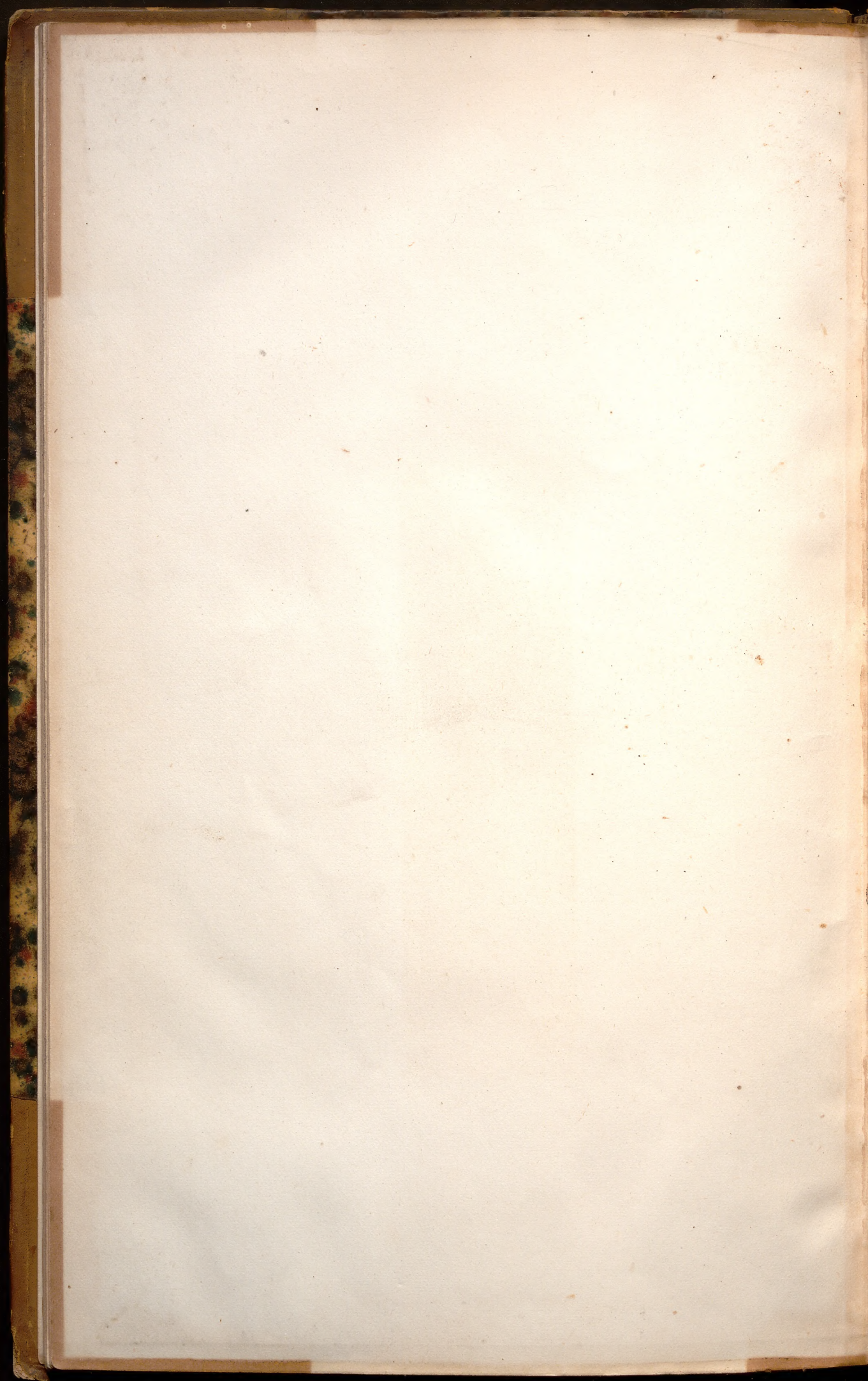
Colors by Munsell Color Services Lab

	1	2	3	4	5	6	7	8	9	10	11(A)	12	13	14	15
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b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19

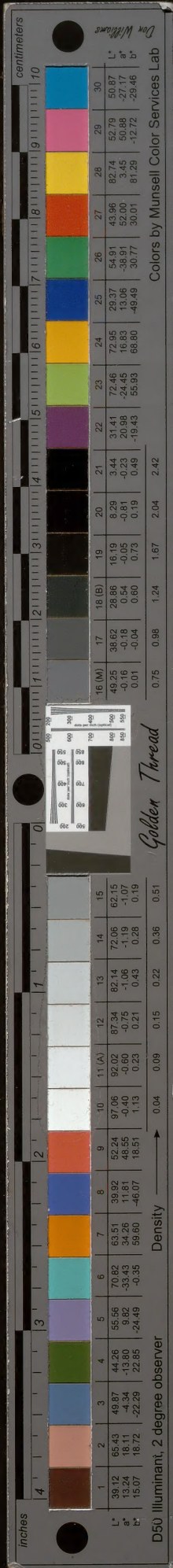
	16(M)	17	18(B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
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b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	81.29	-12.72	29.46	30.01

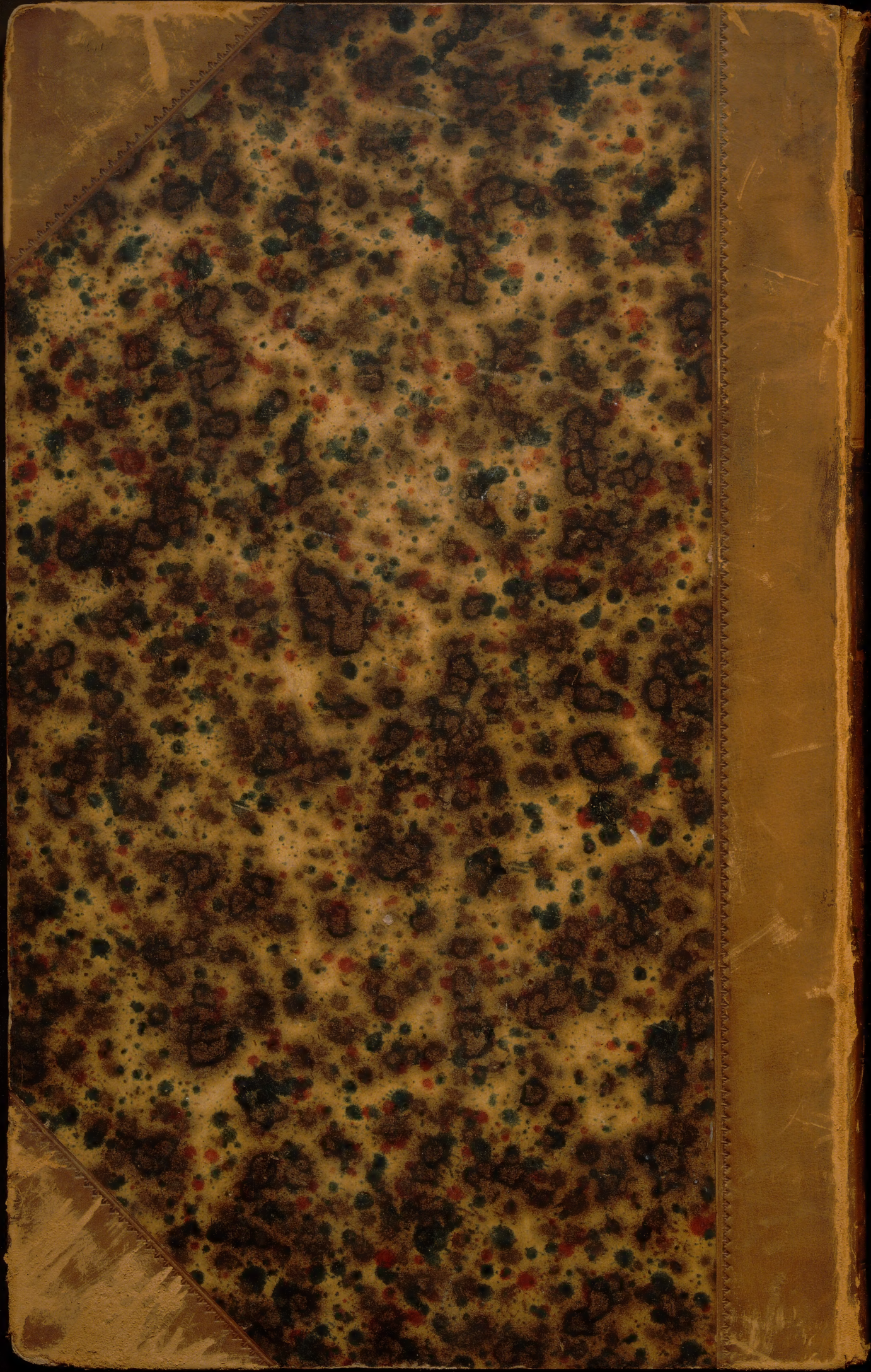
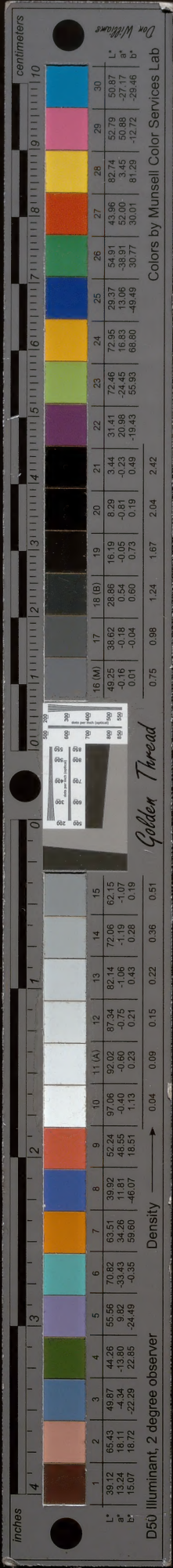
0 1 2 3 4 5 6 7 8 9 10

0 1 2 3 4 5 6 7 8 9 10



1042







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k
3

